

HAWAII

DEPARTMENT OF TRANSPORTATION

AIR AND WATER TRANSPORTATION FACILITIES DIVISIONS

GENERAL PROVISIONS FOR CONSTRUCTION PROJECTS 1977

ARTICLE I—DEFINITIONS AND TERMS

Wherever in these specifications or in other contract documents the following terms or pronouns in place of them are used the intent and meaning shall be interpreted as follows:

1.1 ABBREVIATIONS—Wherever the following abbreviations are used in these specifications or on the plans, they are to be construed the same as the respective expressions represented:

A.A.S.H.T.O.	— American Association of State Highway Transportation Officials
A.S.T.M.	— American Society for Testing Materials
A.W.S.	— American Welding Society
A.W.P.A.	— American Wood Preservers' Association
A.W.W.A.	— American Water Works Association
F.A.A.	— Federal Aviation Administration
H.R.S.	— Hawaii Revised Statutes
N.E.C.	— National Electric Code
N.E.M.A.	— National Electrical Manufacturers Association
N.F.P.A.	— National Fire Protection Association
U.L.	— Underwriters' Laboratory

1.2 ADVERTISEMENT—The public announcement, as required by law, inviting bids for work to be performed or materials to be furnished.

1.3 AWARD—The acceptance by the State of a proposal.

1.4 BIDDER—Any individual, partnership, corporation or other legal entity, or combination thereof, submitting a proposal for the work contemplated, acting either directly or through a duly authorized representative.

1.5 CALENDAR DAY—Every day shown on the calendar. If no designation of calendar or working day is made, "day" shall mean calendar day.

1.6 CONTRACT—The written agreement between the State and the Contractor setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the work, the furnishing of labor and materials, and the basis of payment.

The contract includes the notice to bidders, instructions to bidders, proposal, contract form and contract bond, specifications, special provisions, general and detailed plans, notice to proceed, and change orders that are required to complete the construction of the work in an acceptable manner, all of which constitute one instrument.

1.7 CONTRACT BOND—The approved form of security, executed by the Contractor and his Surety or Sureties, guaranteeing the completion of the work in accordance with the terms of the contract, and guaranteeing full payment of all claims for labor, materials, and supplies used or incorporated in the work.

1.8 CHANGE ORDER—A written order issued by the Director to the Contractor, covering changes in the plans, quantities or both, within the scope of the contract, establishing the basis of payment and time adjustments for the work affected by the changes. A change order is also a written order concerning the performance of work and/or the furnishing of materials involving extra work. Such extra work may be performed at agreed prices or on a force account basis as provided elsewhere in these specifications. A change order signed by all the parties to the contract is a supplemental agreement.

1.9 CONTRACT ITEM (PAY ITEM)—A specifically described unit of work for which a price is provided in the contract.

1.10 CONTRACT TIME—The number of working days or calendar days allowed for completion of the contract, including authorized time extensions.

In case a calendar date of completion is shown in the proposal in lieu of the number of working days, the contract shall be completed by that date.

1.11 CONTRACTOR—The individual, partnership, corporation or other legal entity, or combination thereof, contracting with the State for performance of the prescribed work.

1.12 DEPARTMENT—The State Department of Transportation.

1.13 DIRECTOR—The Director of Transportation, acting either directly or through his duly authorized representative.

1.14 EQUIPMENT—The machinery, apparatus and tools, together with the necessary supplies for their upkeep and maintenance, necessary for the proper prosecution and acceptable completion of the work.

1.15 HOLIDAYS—The days which are set apart and established as State holidays pursuant to Section 8-1, H.R.S.

1.16 INSPECTOR—The Director's authorized representative assigned to make detailed inspections of contract performance and materials supplied.

1.17 LABORATORY—The testing laboratory of the Department or any other testing labo-

ratory which may be designated by the Director.

1.18 MATERIALS—Any substances specified for use in the prosecution of the work.

1.19 MAJOR CONTRACT ITEM—Any contract item of which the total cost as determined by multiplying the proposal quantity and the original contract unit price for that item is equal to or greater than \$25,000 or 5 per cent of the total contract price, whichever is less. Lump sum bids for proposal items or for the project as a whole are not included under this definition.

1.20 MINOR CONTRACT ITEM—Any contract item which is not a major contract item as defined above is a minor contract item. Items appearing as minor items in the original proposal shall be construed as becoming major items when they are increased to the extent that the total cost of the item is equal to or greater than \$25,000 or 5 per cent of the total original contract cost, whichever is less. Lump sum bid items are not included under this definition.

1.21 NOTICE TO BIDDERS—The advertisement for proposals for all work or materials on which bids are required. Such advertisement will indicate with reasonable accuracy the estimated quantity and the location of the work to be done or the character and estimated quantity of the material to be furnished and the time and place of the opening of proposals.

1.22 NOTICE OF AWARD—A written notice from the Director to the successful bidder stating that his proposal has been accepted.

1.23 NOTICE OF FINAL ACCEPTANCE—Written notice from the Director to the Contractor that the entire contract which has been completed in all respects in accordance with the plans, specifications, and any changes thereof previously authorized is accepted.

1.24 NOTICE TO PROCEED—Written notice to the Contractor to proceed with the contract work including the date of beginning of contract time.

1.25 PLANS—The approved plans, profiles, typical cross sections, working drawings and supplemental drawings, or reproductions thereof, which show the location, character, dimensions, and details of the work to be done.

1.26 QUALIFICATION QUESTIONNAIRE—The specified forms on which the Bidder shall furnish required information as to his ability to perform and finance the work.

1.27 PROPOSAL (OR BID)—The offer of a bidder, on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted.

1.28 PROPOSAL FORM—The approved format prepared by the Department or a facsimile thereof on which bids for the work must be prepared and submitted. (Reasonable facsimile acceptable for bidding.)

1.29 PROPOSAL GUARANTY—The security furnished with a bid to guarantee that the bidder will enter into the contract and furnish all other requirements if his bid is accepted.

1.30 SPECIAL PROVISIONS—Revisions to the specifications.

1.31 SPECIFICATIONS—The directions, provisions, and requirements pertaining to the method and manner of performing the work and to the quantities and qualities of materials to be furnished under the contract, which are revised by the Special Provisions.

1.32 SPECIFIED COMPLETION DATE—The date by which the work must be completed.

1.33 STATE—The State of Hawaii.

1.34 SUBCONTRACTOR—An individual, partnership, corporation, other legal entity, or any combination thereof, that enters into an agreement with the Contractor to perform a portion of the work for the Contractor.

1.35 SUPERINTENDENT—The Contractor's representative who is responsible for and in charge of the work.

1.36 SURETY—The corporation, partnership or individual, other than the Contractor, executing a bond furnished by the Contractor and guaranteeing performance by the Contractor.

1.37 TITLES (OR HEADINGS)—The titles or headings of the articles and sections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

1.38 WORK—The furnishing of all labor, materials, equipment, and other incidentals necessary or convenient for the successful completion of the project and the execution of all the duties and obligations imposed by the contract.

1.39 WORKING DAY—A calendar day, which is not a Saturday, Sunday or State holiday, on which weather and other conditions not under the control of the Contractor permit operations to proceed for the major part of the day with normal working force engaged in performing the controlling item or items of work which would be in progress at that time.

1.40 WORKING DRAWINGS—Stress sheets, shop drawings, erection plans, falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data which the contractor is required to submit to the Director for approval.

1.41 —In order to avoid cumbersome and confusing repetition of expressions in these specifications, it is provided that whenever anything "is, or is to be done," "if, as, upon, or, when," or where "contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected, or condemned," it shall be understood as if the expression were followed by the words "by the Director," "to the Director," or "of the Director."

1.42 —Unless otherwise indicated, whenever the word "Article" or "Section" is used reference is being made to an article or section in these specifications.

1.43 —Reference to federal, state, and city and county laws, ordinances, rules and regulations, and standard specifications, include amendments effective as of the date of the call for sealed tenders.

ARTICLE II—PROPOSAL REQUIREMENTS AND CONDITIONS

2.1 CONTRACTOR'S LICENSE—Attention is directed to the provisions of Chapter 444, H.R.S., regarding the licensing of contractors in the State.

Except for projects involving federal funds and except where a contractor's license is not required, a bidder must have the required contractor's license before he submits his proposal. In a project involving federal funds, a bidder need not have a contractor's license at the time of the submission of his proposal, but he must have the required license before the contract will be awarded to him in case he is the successful bidder.

2.2 QUALIFICATION OF BIDDERS—Prospective bidders must be capable of performing the work for which bids are called.

Pursuant to Section 103-25, H.R.S., each bidder shall file at the Programs and Contracts Office, Department of Transportation, Aliiainmoku Hale, 869 Punchbowl Street,

1.35 SUPERINTENDENT—The Contractor's representative who is responsible for and in charge of the work.

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Honolulu, Hawaii 96813, a written notice of his intention to bid at least six (6) calendar days prior to the date designated for the opening of bids. If the notice is mailed, it shall be mailed in sufficient time to meet the deadline set above.

In accordance with said Section 103-25, the Director may require any prospective bidder to submit answers to questions contained in the "Standard Qualification Questionnaire for Prospective Bidders on Public Works Contracts" form furnished by the Department, properly executed and notarized, at least forty-eight (48) hours prior to the time advertised for the opening of bids. The Director may also require additional information as he deems necessary. All information so provided shall be kept confidential and the questionnaire and other written material shall be returned to the bidder after serving their purpose.

Whenever it appears to the State, from the questionnaire or otherwise, that the prospective bidder is not fully qualified and able to perform the work, the State shall, if after affording the prospective bidder an opportunity to be heard and if still of the opinion that the bidder is not fully qualified to perform the work, refuse to receive or consider the prospective bidder's proposal.

Failure to complete the qualification questionnaire is sufficient cause for the Department to reject a bid.

2.3 CONTENTS OF PROPOSAL FORMS—Upon request, the Department will furnish the prospective bidder with a proposal form which will state the location and description of the contemplated work, an estimate of the various quantities and items of work to be performed or materials to be furnished and a schedule of items for which bid prices are asked. The proposal form will also state the time within which the work must be completed, the amount of the proposal guaranty, and the date, time and place of the opening of proposals.

All papers bound with or attached to the proposal form are a part thereof and shall not be altered when the proposal is submitted.

The plans, specifications and other documents designated in the proposal form are also a part thereof, whether attached or not.

The prospective bidder must deposit with the Department the sum stated in the Notice to Bidders for each copy of the proposal form and each set of plans. Failure to return said documents in good condition within thirty (30) days after the opening of bids will result in forfeiture of the sum deposited.

2.4 ISSUANCE OF CONTRACT DOCUMENTS—The Department may refuse to issue contract documents to a prospective bidder for any of the following reasons:

The prospective bidder's:

- (1) Failure to pay, or satisfactorily settle, all bills due for labor and material on contracts in force at the time of the call for tenders.
- (2) Default in previous contracts.

2.5 ESTIMATED QUANTITIES—All quantities appearing in the contract are approximate and those indicated in the proposal schedule are prepared for the comparison of bids only. The State does not expressly or impliedly warrant that the actual amount of work will correspond therewith. Payment to the Contractor will be made only for the actual quantities of work performed and accepted or materials furnished in accordance with the contract, and no change will be made in the contract unit prices if overruns and underruns occur. The scheduled quantities of work to be done and materials to be furnished, however, may each be increased, decreased or omitted; provided that, when the State orders in writing an alteration pursuant to Section 4.2, and the total effect of such alteration, when combined with previous

alterations and agreed changes, increases or decreases the estimated quantity of a *major contract item* by more than 25 per cent, payment for such item will be in accordance with Section 4.2.

2.6 EXAMINATION OF PLANS, SPECIFICATIONS AND SITE OF WORK—The bidder shall carefully examine the site of the proposed work, the proposal, plans, specifications, special provisions, if any, and the contract and bond forms, before submitting his proposal. The submission of a proposal is a warranty that the bidder has made an examination and is fully aware of all conditions to be encountered in performing the work and of the requirements of the plans, specifications, special provisions, contract and bond.

The subsurface information or hydrographic surveys furnished for the convenience of the bidders are based on the interpretation by the State of investigations made at the specified locations only, and no assurance is given that these conditions are necessarily typical of other locations or that conditions have remained unchanged since the field data were obtained. No assurance is given that the presence or absence of water in subsurface explorations at the time of these explorations is representative of the conditions to be encountered at the time of construction. The bidder is solely responsible for all assumptions, deductions, or conclusions which he may make or derive from his examination of any furnished subsurface information or tests.

2.7 PREPARATION OF PROPOSAL—The bidder shall submit his proposal upon the forms furnished by the Department or a facsimile thereof. The bidder shall specify unit prices in words or figures, or both as required, for each pay item. He shall also show the products of the respective unit prices and quantities written in figures in the column provided for that purpose and the total amount of the proposal obtained by adding the amounts of the several items. All the words and figures shall be in ink or typed. In case of a discrepancy between the prices written in words and those written in figures, when both are required, the prices written in words shall govern.

When an item in the proposal contains a choice to be made by the bidder, the bidder shall indicate his choice in accordance with the specifications for that particular item; thereafter no further choice will be permitted.

The bidder's proposal must be signed with ink by the person or persons legally authorized to submit a proposal on behalf of the bidder.

When a proposal is signed by an agent, proof of the authority to sign the proposal for the bidder must be on file with the State prior to the opening of proposals or shall be submitted with the proposal; otherwise, the proposal will be rejected as irregular and unauthorized.

2.8 IRREGULAR PROPOSALS—Proposals will be considered irregular and may be rejected for any of the following reasons:

- (1) If the proposal is in a form other than that furnished by the Department; or if the form is altered or any part thereof is detached.
- (2) If there are unauthorized additions, conditional or alternate proposals, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- (3) If the bidder adds any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.

This does not exclude a proposal limiting the maximum gross amount of awards acceptable to any one bidder at any one bid letting, provided that any selection of awards will be made by the State.

- (4) If the proposal does not contain a bid price for each pay item listed.
- (5) Unbalanced proposals in which the prices for some items are out of proportion to the prices for other items.

2.9 PROPOSAL GUARANTY—All bids of \$15,000 or more shall be accompanied by a deposit of legal tender or by a certificate of deposit, cashier's check or certified check on a bank that is insured by the Federal Deposit Insurance Corporation, in a sum not less than five percent of the amount bid, payable at sight to the Department of Transportation, State of Hawaii; provided that when the amount bid exceeds \$50,000, the legal tender, certificate of deposit, cashier's check or certified check shall be in a sum not less than \$2,500 plus two per cent of the amount in excess of \$50,000. A certificate of deposit, cashier's check or certified check may be utilized only to a maximum of \$40,000.

A bid requiring a proposal guaranty in excess of \$40,000 shall only be in the form of legal tender or a surety bond conforming to the requirement of Section 103-31, H.R.S., as amended.

2.10 DELIVERY OF PROPOSAL—A bidder shall submit his proposal in a sealed envelope bearing on the outside the identity of the project and his name and address. A proposal not received at the place specified in the Notice to Bidders prior to the time set for the opening of proposals will be rejected and returned unopened.

2.11 WITHDRAWAL OR REVISION OF PROPOSALS—A bidder may withdraw or revise a proposal after it has been deposited with the State, provided the request for such withdrawal or revision is received by the State, in writing, before the time set for the opening of proposals. If the request is for a revision, the revised proposal must be received by the officer calling for tenders prior to the time set for the opening of proposals or it shall be treated as a request for withdrawal.

2.12 PUBLIC OPENING OF PROPOSALS—Proposals will be opened and read publicly at the time and place(s) indicated in the Notice to Bidders. Bidders, their authorized agents, and other interested parties are invited to be present.

2.13 DISQUALIFICATION OF BIDDERS—Any of the following reasons may be considered as being sufficient grounds for the disqualification of a bidder and the rejection of his proposal or proposals.

- (1) More than one proposal for the same work from an individual, firm, or corporation under the same or different name.
- (2) Evidence of collusion among bidders. Participants in such collusion will receive no recognition as bidders for any future work of the Department until such participant shall have been reinstated as a qualified bidder.
- (3) Lack of proposal guaranty.
- (4) Unsigned proposal.

2.14 DECLARATION OF STATE EMPLOYMENT—Pursuant to Section 84-15, H.R.S., the successful bidder is required to execute and submit the "Declaration of State Employment" before the contract will be awarded to him.

Said Section 84-15 specifies, among other things, that "A State agency shall not enter into contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned."

ARTICLE III—AWARD AND EXECUTION OF CONTRACT

3.1 CONSIDERATION OF PROPOSALS—After the proposals are opened and read, they will be compared on the basis of the summation of the products arrived at by the multiplication of the approximate quantities shown in the bid schedule by the unit bid prices. The results of such comparisons will immediately be made available to the public. In the event of a discrepancy between unit bid prices and extensions, the unit bid price shall govern.

The State reserves the right to reject any or all proposals, to waive defects, to select any alternates or to advertise for new proposals for the best interests of the public.

3.2 AWARD OF CONTRACT—The award of contract, if it be awarded, will be made within sixty (60) calendar days after the opening of bids to the lowest responsible bidder whose proposal complies with all the requirements. The successful bidder will be notified, by letter mailed to the address shown on his proposal, that his proposal has been accepted and that he has been awarded the contract.

3.3 CANCELLATION OF AWARD—The State reserves the right to cancel the award of any contract any time before the execution of said contract by all parties without any liability to the successful bidder or any other bidder.

3.4 RETURN OF PROPOSAL GUARANTY—All proposal guaranties, except those of the lowest two bidders, will be returned immediately following the opening and checking of the proposal guaranty of the second lowest bidder, if not a bid bond, will be returned within ten (10) calendar days following execution of contract. The successful bidder's proposal guaranty, if not a bid bond, will be returned after a satisfactory contract bond has been furnished and the contract has been executed.

3.5 REQUIREMENT OF CONTRACT BOND—At the time of the execution of the contract, the successful bidder shall file a good and sufficient surety bond on the form furnished by the Department, similar to a copy of the same annexed hereto, conditioned for the full and faithful performance of the contract in accordance with terms and intent thereof and also for the prompt payment to all others for all labor and materials furnished by them to him and use in the prosecution of the work provided for in such contract, in the manner, form and amount required by Sections 78-20, 103-34 and 103-35, H.R.S., which bond shall be in an amount equal to 50 per cent of the contract price or as specified elsewhere in the bid document, plus allowance for extra work, if any. Such bond shall also by its terms inure to the benefit of any and all persons entitled to file claims for labor performed or materials furnished in the work so as to give them a right of action as contemplated by Section 507-17, H.R.S.

3.6 EXECUTION OF CONTRACT—The contract, similar to a copy of the same annexed hereto, shall be executed by the successful bidder and returned, together with the contract bond, within ten (10) days after the award of the contract or within such further time as the Director may allow after the bidder has received the contract for execution.

Pursuant to Section 103-39, H.R.S., the contract shall not bind the State in any way unless said contract has been fully and properly executed by all the parties thereto and the Comptroller has endorsed thereon his certificate that there is available an unexpended appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract.

3.7 FAILURE TO EXECUTE CONTRACT—Failure to execute the contract and file acceptable bond within ten (10) days after the award of the contract, or within such further time as the Director may allow, shall be cause for the cancellation of the award and the forfeiture of the proposal guaranty. Award of the contract may then be made to the next lowest responsible bidder.

ARTICLE IV—SCOPE OF WORK

4.1 INTENT OF CONTRACT—The intent of the contract is to provide for the construction, complete in every detail, of the work described or for the furnishing of materials or both. The Contractor shall furnish all labor, materials, equipment, tools, transportation, supplies and other incidentals required to complete the work in accordance with the plans, specifications and terms of the contract.

4.2 ALTERATIONS—The State reserves the right to order, at any time during the progress of the work, alterations involving increases or decreases in the quantity of any contract item and alterations in the details of construction as may be found necessary or desirable. The ordering of alterations shall not invalidate the contract or release the surety, and the contractor shall comply with any such order, as though it has been a part of the original contract.

Alterations in the details of construction shall not involve or require work beyond the original proposed construction unless a change order is issued to that effect.

Unless ordered changes increase or decrease the quantity of a *major contract item* more than twenty-five (25) per cent, the work shall be performed as a part of the contract and paid for at the unit bid prices.

Changes in natural or any other conditions in the items of excavation shall not be considered an alteration, increase or decrease within the meaning of this Section.

An alteration in the type of the work which involves work different in kind or nature from any item involved or called for in the original contract shall be treated as extra work and the provisions of Section 4.3 shall apply.

The provisions of this Section shall not apply to overruns and underruns on items which are estimated in the proposal.

No claim shall be made by the Contractor for any loss of anticipated profits because of any such alteration, or by reason of any variation between the approximate quantities and the quantities of work as done.

Payment for alterations will be made in accordance with the provisions of Section 9.3. If the alteration is of sufficient magnitude as to require additional time in which to complete the project, adjustment will be made in accordance with the provisions of Section 8.7.

A. INCREASED OR DECREASED QUANTITIES—Except for lump sum items which are covered in Subsection 4.2(B), in the event the Contractor is ordered to make alterations involving an increase or decrease in the quantity of any *major contract item*, or to omit portions of the work, no adjustment will be made in the unit price for any increase or decrease in the cost of any given *major contract item* unless the quantity of such item is increased or decreased more than twenty-five (25) per cent of the estimated contract amount of such item.

If an alteration is ordered which, together with previous orders or agreed changes in quantity, increases or decreases the amount of a *major contract item* more than twenty-five (25) per cent of the approximate quantity shown in the proposal schedule, an adjustment will be made. Such adjustment for an item, the quantity of which has been increased, will be based on the decreased actual cost per unit of said item to the Contractor and shall apply only to the increase in excess of one hundred twenty-five (25) per cent of the approximate quantity shown in the proposal schedule.

For decreased quantities, the adjustment in unit price shall be such that the total payment for the contract item shall not exceed seventy five per cent (75%) of the original bid

amount of said contract item.

- B. LUMP SUM ITEMS**—Should the Contractor be directed to make changes involving an increase or decrease in the quantity of any specified lump sum item or portion of the lump sum work or to omit portions of the lump sum work, adjustment in payment will be made only for items of work affected.

When the increase or decrease does not exceed ten (10) per cent of the original specified quantity, the adjustment in lump sum price will be based on a theoretical unit price. The theoretical unit price will be determined by dividing the original contract lump sum for the item of work by the originally specified quantity for that item of work.

The increase or decrease in the original lump sum price, as the case may be, shall be the product of the theoretical unit price and the quantity involved not exceeding ten (10) per cent of the original specified quantity for the item of work.

When the increase exceeds ten (10) per cent of the originally specified quantity, the adjustment in payment for the quantity in excess of ten (10) per cent shall be mutually agreed to by the Contractor and the Director, and in the event of failure to agree, any such increased work shall be paid for on a force account basis in accordance with the provisions of Section 9.4.

When the decrease exceeds ten (10) per cent of the originally specified quantity, all reduction in the originally specified lump sum price will be based on the theoretical unit price, or the reduction up to ten (10) per cent will be based on the theoretical unit price, and the reduction in excess of the stated percentage shall be computed as if the work involved was performed on a force account basis in accordance with the provisions of Section 9.4, or as mutually agreed to by the Contractor and the Director.

When the quantity of any lump sum item of work is not specified, the adjustment in lump sum price will be determined by the Director in the same manner as if the increase or decrease were to be paid for on a force account basis in accordance with the provisions of Section 9.4, or as mutually agreed to by the Contractor and the Director.

4.3 EXTRA WORK—Work determined by the Director to be new and unforeseen and not covered by any of the items for which there is a bid price or by a combination of items shall be treated as extra work.

The Contractor shall do extra work and furnish labor, materials and equipment therefor only upon receipt of a written order from the Director. In the absence of a written order, the Contractor shall not be entitled to payment for such extra work.

Payment for extra work will be made by force account in accordance with the provisions of Section 9.4, or as mutually agreed to by the Director and the Contractor. Extension of contract time, if any, shall be in accordance with the provisions of Section 8.7.

4.4 MAINTENANCE OF TRAFFIC—The Contractor shall keep all roads within the working area open to all traffic during the progress of the work.

The Contractor shall install, provide, and maintain all necessary signs, lights, flares, barricades, and other protective facilities and shall take all necessary precautions for the protection of the work and the convenience and safety of public traffic. All such protective facilities, precautions to be taken and control of traffic through the construction area shall conform and be in accordance with all the "Rules and Regulations Governing the Use of Traffic Control Devices at Work Sites on or Adjacent to Public Streets and Highways", "The Rules and Regulations Governing the Design, Construction and Maintenance of Public Streets and Highways", both as adopted by the Highway Safety Coordinator, State of Hawaii, and the "Manual on Uniform Traffic Control Devices for Streets and Highways", published by

the U. S. Federal Highway Administration in June of 1961 and any amendments or revisions thereof as may be made from time to time.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic. At the end of each day's work or when construction operations are suspended for any reason, the Contractor shall remove all obstructions to the free and safe passage of public traffic.

4.5 CONSTRUCTION AND MAINTENANCE OF DETOURS—The Contractor shall construct and maintain detours for the use, convenience and safety of public traffic. Unless indicated otherwise in the contract, all such work for the use, convenience and safety of public traffic shall be considered incidental to the work of the various pay items of the contract and no additional payment will be allowed therefor.

All detours shall be approved in writing by the Director.

ARTICLE V—CONTROL OF WORK

5.1 AUTHORITY OF THE DIRECTOR—The Director will decide all questions which may arise regarding the quality and acceptability of materials furnished and work performed and the rate of progress of the work, the interpretation of the plans and specifications, the acceptable fulfillment of the contract, and compensation. His estimates and decisions upon all claims, questions and disputes will be final and conclusive.

The Director may enforce in any suitable manner the decisions and orders which the Contractor fails to carry out promptly and diligently.

The Director may, for such periods as he may deem necessary, suspend the work in whole or in part (1) for failure of the Contractor to correct unsafe conditions for the workmen or the general public, carry out provisions of the contract, or carry out orders; and (2) for unsuitable weather, for conditions considered unsuitable for the prosecution of the work, or for any other condition or reason deemed to be in the public interest.

5.2 PLANS AND WORKING DRAWINGS—The plans furnished by the State consist of general drawings and show details necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the plans shall be in writing. The Contractor shall keep one set of plans available on the job at all times.

The Contractor shall furnish working drawings for structures which shall consist of the detailed plans required to control the work. The working drawings to be furnished by the Contractor shall include, but not be limited to, stress sheets, anchor bolt layouts, shop details, erection plans, cribs, cofferdams, falsework, centering, form work and other temporary work and methods of construction.

The Contractor shall be responsible for the accuracy of dimensions and details, and for agreement of dimensions and details. He shall be responsible for the agreement and conformity of his working drawings with the plans and specifications.

All working drawings must be approved by the Director and such approval shall not operate to relieve the Contractor of his responsibility under the contract for the successful completion of the work. No change shall be made in any approved working drawings without the written permission of the Director. The contract price includes the cost of furnishing all working drawings and no additional compensation will be allowed therefor.

5.3 CONFORMITY WITH PLANS AND SPECIFICATIONS—The work shall be completed in conformity with the specified values and dimensions set forth in the contract.

the U. S. Federal Highway Administration in June of 1961 and any amendments or revisions thereof as may be made from time to time.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic. At the end of each day's work or when construction operations are suspended for any reason, the Contractor shall remove all obstructions to the free and safe passage of public traffic.

4.5 CONSTRUCTION AND MAINTENANCE OF DETOURS—The Contractor shall construct and maintain detours for the use, convenience and safety of public traffic. Unless indicated otherwise in the contract, all such work for the use, convenience and safety of public traffic shall be considered incidental to the work of the various pay items of the contract and no additional payment will be allowed therefor.

All detours shall be approved in writing by the Director.

ARTICLE V—CONTROL OF WORK

5.1 AUTHORITY OF THE DIRECTOR—The Director will decide all questions which may arise regarding the quality and acceptability of materials furnished and work performed and the rate of progress of the work, the interpretation of the plans and specifications, the acceptable fulfillment of the contract, and compensation. His estimates and decisions upon all claims, questions and disputes will be final and conclusive.

The Director may enforce in any suitable manner the decisions and orders which the Contractor fails to carry out promptly and diligently.

The Director may, for such periods as he may deem necessary, suspend the work in whole or in part (1) for failure of the Contractor to correct unsafe conditions for the workmen or the general public, carry out provisions of the contract, or carry out orders; and (2) for unsuitable weather, for conditions considered unsuitable for the prosecution of the work, or for any other condition or reason deemed to be in the public interest.

5.2 PLANS AND WORKING DRAWINGS—The plans furnished by the State consist of general drawings and show details necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the plans shall be in writing. The Contractor shall keep one set of plans available on the job at all times.

The Contractor shall furnish working drawings for structures which shall consist of the detailed plans required to control the work. The working drawings to be furnished by the Contractor shall include, but not be limited to, stress sheets, anchor bolt layouts, shop details, erection plans, cribs, cofferdams, falsework, centering, form work and other temporary work and methods of construction.

The Contractor shall be responsible for the accuracy of dimensions and details, and for agreement of dimensions and details. He shall be responsible for the agreement and conformity of his working drawings with the plans and specifications.

All working drawings must be approved by the Director and such approval shall not operate to relieve the Contractor of his responsibility under the contract for the successful completion of the work. No change shall be made in any approved working drawings without the written permission of the Director. The contract price includes the cost of furnishing all working drawings and no additional compensation will be allowed therefor.

5.3 CONFORMITY WITH PLANS AND SPECIFICATIONS—The work shall be completed in conformity with the specified values and dimensions set forth in the contract.

However, deviations as may be required by the exigencies of construction which do not affect the performance of the completed work may be allowed by the Director.

During the course of the work, samples may be tested and measurements made to establish whether or not the specified values or dimensions are being met. If the specified values or dimensions are not being met, the Director will determine the degree of the non-conformance, the effect on the serviceability of the project, whether the work will be accepted and remain in place and, if so, the amount to be paid for such work, or whether the work shall be removed and replaced or otherwise corrected at the Contractor's expense.

5.4 FURNISHING AND COORDINATION OF PLANS AND SPECIFICATIONS—The plans, specifications, special provisions, if any, and all supplementary documents are essential parts of the contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complimentary and to describe and provide for the complete work. In case of a conflict or discrepancy within a document, the stricter requirement shall govern, unless the Director determines otherwise. In case of dimensional discrepancy, calculated dimensions will govern over scaled dimensions. In case of discrepancy between documents, the plans will govern over specifications; special provisions will govern over both specifications and plans.

The Contractor shall not take advantage of any apparent error or omission in the plans or specifications. In the event the Contractor discovers such an error or omission, he shall immediately notify the Director. The Director will then make such corrections as he deems necessary for fulfilling the intent of the plans and specifications.

The Contractor shall give the work the attention necessary to facilitate the progress thereof, and shall cooperate with the Director, his inspectors, and other contractors in every way possible.

The Contractor shall have on the work at all times, as his agent, a competent superintendent capable of thoroughly understanding the plans and specifications and thoroughly experienced in the type of work being performed. The superintendent shall have full authority to execute orders or directions of the Director without delay, and to promptly supply such materials, equipment, tools, labor and incidentals as may be required. Such superintendence shall be furnished irrespective of the amount of work subcontracted.

5.5 COOPERATION BETWEEN CONTRACTORS—The State reserves the right at any time to contract for or otherwise perform other or additional work on or near the work covered by the contract.

When other State contracts are let within the limits of any one project, the Contractor shall, to the extent ordered by the State, conduct his work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors. Contractors working on the same project shall cooperate with each other as directed.

The Contractor assumes all burdens, financial or otherwise, in connection with his contract and releases the State from any and all liability for damages because of inconvenience, delay, or loss experienced by him because of the presence and operations of other contractors working within the limits of the same project.

The Contractor shall arrange his work and shall place and dispose of the materials being used so as not to interfere with the operations of the other contractors within the limits of the same project. He shall join his work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

5.6 AUTHORITY AND DUTIES OF PROJECT ENGINEER—The project engineer has immediate charge of the engineering details of each construction project. He is responsible

for the administration and satisfactory completion of the project. He is delegated commensurate authority, and he may reject defective material and order the suspension of any work being improperly performed.

5.7 DUTIES OF THE INSPECTOR—Inspectors employed by the State are authorized to inspect all work done and materials furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication or manufacture of the materials to be used. The inspector may not alter or waive the provisions of the contract, issue instructions contrary to the plans and specifications, or act as foreman for the Contractor.

In the absence of a project engineer, the inspector shall be in charge of the project and assume the duties of the project engineer.

5.8 INSPECTION OF WORK—All materials and each part or detail of the work shall be subject to inspection by the Director. The Director shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

Any time prior to the acceptance of the work, for the purpose of detailed inspection, the Contractor shall remove or uncover such portions of the work as may be directed. After inspection, the Contractor shall restore said portions of the work to the standard required by the specifications. If the work exposed and inspected is acceptable, the uncovering, or removing, and the replacing of the covering or making good of the portions removed will be paid for as extra work; but if the work is unacceptable, the work and making good of the portion removed will be at the Contractor's expense.

Any work done or materials used without supervision or inspection by an authorized representative of the State may be ordered removed and replaced at the Contractor's expense unless the said representative failed to inspect the work after being given reasonable notice in writing that the work was to be performed.

The provisions of the preceding paragraphs are not intended to cover sampling, testing and measurement normally performed as a routine procedure by the State.

The inspection of the work shall not relieve the Contractor of any of his obligations to fulfill his contract as prescribed, and defective work shall be made good and unsuitable materials may be rejected, notwithstanding that such defective work and materials have been previously overlooked and accepted or estimated for payment.

5.9 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK—All work not conforming to the requirements of the contract will be considered unacceptable work.

Unacceptable work caused by poor workmanship, use of defective materials, damage through carelessness or any other cause, and found to exist prior to the final acceptance of the work, shall be removed immediately and replaced in an acceptable manner.

Any work done beyond the limits shown on the plans and specifications or established by the Director or any extra work done without written authority will be considered unauthorized and will not be paid for. Unauthorized work may be ordered removed or replaced by the Director at the Contractor's expense.

If the Contractor fails to remedy upon notice a situation caused by unacceptable or unauthorized work, the Director may cause unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and he may deduct the costs from any monies due or to become due the Contractor.

5.10 MAINTENANCE OF THE WORK—The Contractor shall maintain the work until the project is accepted.

All costs of maintenance during construction and before the project is finally accepted are included in the unit or lump sum prices bid on the various pay items and the Contractor will not be paid an additional amount for such maintenance.

If the Contractor, at any time, fails to properly maintain the work, the Director will notify the Contractor of such non-compliance. If the Contractor fails to properly maintain the work within twenty-four (24) hours after receipt of such notice, the Director may immediately maintain the project, and the entire cost of this maintenance will be deducted from monies due or to become due the Contractor.

5.11 FINAL CLEANING UP—Before final inspection of the work, the Contractor shall clean the project site and other sites used by him in connection with the work. The work shall be left in a neat and presentable condition. Full compensation for final cleaning up is included in the prices paid for the various contract items of work, and no separate or additional payment will be made therefor.

5.12 ACCEPTANCE

A. PARTIAL ACCEPTANCE—If, during the prosecution of the project the Contractor completes a unit or portion of the project, see p. 5-6. If the Director finds that the unit has been substantially completed in compliance with the contract, he may accept that unit or portion of the project as being completed and the Contractor may be relieved of further responsibility for that unit or portion of the project. Such partial acceptance shall in no way void or alter any of the terms of the contract.

B. FINAL ACCEPTANCE—Upon notice from the Contractor of completion of the entire project, the Director will make an inspection. If the contract is found completed to the Director's satisfaction, such inspection shall constitute the final inspection and the Director will notify the Contractor in writing of his acceptance.

If the inspection discloses any unsatisfactory work, the Director will notify the Contractor in writing of the particular items or portions of the work that are unsatisfactorily performed. The Contractor shall immediately remedy the unsatisfactory items or portions of the work. Upon completion of the remedial work, the Contractor shall notify the Director who will make another inspection. If such inspection discloses the work has been satisfactorily completed, the Director will notify the Contractor in writing of the acceptance as of the date of the final inspection. Any unit which becomes damaged by the Contractor through his use thereof shall be repaired, replaced, or restored at his expense to the satisfaction of the Director.

5.13 CLAIMS FOR ADJUSTMENT AND DISPUTES:—If the Contractor deems that additional compensation is due him for work or material not clearly covered in the contract or not ordered by the Director as extra work, as defined herein, the Contractor shall notify the Director in writing of his intention to make claim for such extra compensation ten (10) days before he begins the work on which he bases the claim and shall afford the Director every facility for keeping an accurate account of the actual cost of the work. Failure on the part of the Contractor to give such notification or to afford the Director proper facilities for keeping strict account of actual cost will constitute a waiver of the claim for such additional compensation. The filing of the notice of such claim by the Contractor and the keeping of cost by the Director shall not in any way be construed to establish the validity of the claim. If the Director considers the claim justified, payment will be made as extra work. The provisions of this Section shall not be construed as establishing any claim contrary to the terms of Section 4.3.

5.14 VALUE ENGINEERING—On projects with contract amounts in excess of \$100,000, the following Value Engineering Incentive Clause shall apply to allow the Contractor to share in cost savings that ensue from cost reduction proposals submitted by him.

Value Engineering Incentive Clause

- A. This clause applies to all Value Engineering Change Proposals (cost reduction proposals, hereinafter referred to as "VECP") initiated and developed by the Contractor for changing the drawings, designs, specifications, or other requirements of this contract. This clause does not, however, apply to any VECP unless it is identified as such by the Contractor at the time of its submission to the Director.
- B. All VECP must:
- (1) result in a savings to the State by providing less costly items than those specified herein without impairing any of their essential functions and characteristics such as service life, reliability, economy of operation, ease of maintenance, desired appearance; and
 - (2) require, in order to be applied to this contract, a change order to this contract.
- C. The VECP will be processed expeditiously and in the same manner as prescribed for any other proposal which would likewise necessitate issuance of a contract change order. As a minimum, the following information will be submitted by the Contractor with each proposal:
- (1) a description of the difference between the existing contract requirement and the VECP, and the comparative advantages and disadvantages of each;
 - (2) an itemization of the requirements of the contract which must be changed if the VECP is adopted and a recommendation as to how to make each such change;
 - (3) an estimate of the reduction in performance costs that will result from adoption of the VECP taking into account the costs of implementation by the Contractor, including any amounts attributable to subcontracts, and the basis for the estimate;
 - (4) a prediction of any effects the VECP would have on other costs to the State, such as State-furnished property costs, costs of related items, and costs of maintenance and operation;
 - (5) a statement of the time by which a change order adopting the VECP must be issued so as to obtain the maximum cost reduction during the remainder of this contract, noting any effect on the contract time; and
 - (6) the dates of any previous submissions of the VECP, the numbers of any Government contracts under which submitted and the previous actions by the Government, if known.
- D. The State shall not be liable for any delays in acting upon, or for any failure to act upon any proposal submitted pursuant to this clause. The decisions of the Director as to the acceptance of any VECP under this contract shall be final. Unless and until a change order applies a VECP to this contract, the Contractor shall remain obligated to perform in accordance with the terms of the existing contract. The Director may accept in whole or in part any VECP submitted pursuant to this clause by issuing a change order which will identify the VECP on which it is based.
- E. If a VECP submitted pursuant to this clause is accepted under this contract, an equitable adjustment in the contract price and in any other affected provisions of this contract shall be made in accordance with this clause and the "Changes" clause of this contract. The equitable adjustment shall first be established by determining the effect on the Contractor's cost of performance, taking into account

the Contractor's cost of implementing the change (including any amount attributable to subcontracts). The contract price shall then be reduced by the total estimated decrease in the cost of performance minus fifty percent (50%) of the difference between the amount of such total estimated decrease and any ascertainable costs to the State which must be incurred to apply the VECP to this contract.

- F. Cost reduction proposals submitted under the provisions of any other contract also may be submitted under this contract for consideration pursuant to the terms of this clause.
- G. The Contractor may restrict the right of the State and/or Federal government (hereinafter referred to as "Government") to use any sheet of a VECP or of the supporting data, submitted pursuant to this clause, in accordance with the terms of the following legend if it is marked on such sheet. "This data furnished pursuant to a value engineering incentive clause shall not be disclosed outside the Government, or be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under said clause. This restriction does not limit the Government's right to use information contained in this data if it is or has been obtained from another source, or is otherwise available, without limitations. If such a proposal is accepted by the State by issuance of a change order under the "Changes" clause of said contract after the use of this data in such an evaluation, the Government shall have the right to duplicate, use and disclose any data pertinent to the proposal as accepted, in any manner and for any purpose whatsoever, and have others so do".

In the event of acceptance of value engineering proposal, the Contractor hereby grants to the Government all rights to use, duplicate or disclose in whole or part, in any manner and for any purpose whatsoever, and to have or permit others to do so, any data reasonably necessary to fully utilize such proposal. Contract modifications made as a result of this clause will state that they are made pursuant to it.

ARTICLE VI—CONTROL OF MATERIAL

6.1 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS—The materials used on the work shall meet all quality requirements of the contract. In order to expedite the inspection and testing of materials, the Contractor shall notify the Director of his proposed sources of materials within ten (10) days after the date of award of the contract on a form furnished by the Department. At the option of the Director, materials may be approved at the source of supply before delivery is started. If it is found after trial that sources of supply for previously approved materials do not produce specified products the Contractor shall furnish acceptable materials from other sources.

6.2 NATURAL MATERIAL SOURCES—Possible sources of natural materials may be designated on the plans and described in the specifications. The quality of material in such deposits will be acceptable in general, but the Contractor shall determine for himself the amount of equipment and work required to produce a material meeting the specifications. It is understood that it is not feasible to ascertain from samples the limits of an entire deposit, and that variations are usual and to be expected. The Director may order procurement of material from any portion of a deposit and may reject portions of the deposit as unacceptable.

The State may make available to the Contractor the right to take materials from the sources designated on the plans and described in the specifications, together with the right to use such property as may be specified, for plant site, stockpiles and hauling roads.

the Contractor's cost of implementing the change (including any amount attributable to subcontracts). The contract price shall then be reduced by the total estimated decrease in the cost of performance minus fifty percent (50%) of the difference between the amount of such total estimated decrease and any ascertainable costs to the State which must be incurred to apply the VECP to this contract.

- F. Cost reduction proposals submitted under the provisions of any other contract also may be submitted under this contract for consideration pursuant to the terms of this clause.
- G. The Contractor may restrict the right of the State and/or Federal government (hereinafter referred to as "Government") to use any sheet of a VECP or of the supporting data, submitted pursuant to this clause, in accordance with the terms of the following legend if it is marked on such sheet. "This data furnished pursuant to a value engineering incentive clause shall not be disclosed outside the Government, or be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under said clause. This restriction does not limit the Government's right to use information contained in this data if it is or has been obtained from another source, or is otherwise available, without limitations. If such a proposal is accepted by the State by issuance of a change order under the "Changes" clause of said contract after the use of this data in such an evaluation, the Government shall have the right to duplicate, use and disclose any data pertinent to the proposal as accepted, in any manner and for any purpose whatsoever, and have others so do".

In the event of acceptance of value engineering proposal, the Contractor hereby grants to the Government all rights to use, duplicate or disclose in whole or part, in any manner and for any purpose whatsoever, and to have or permit others to do so, any data reasonably necessary to fully utilize such proposal. Contract modifications made as a result of this clause will state that they are made pursuant to it.

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6.2 NATURAL MATERIAL SOURCES—Possible sources of natural materials may be designated on the plans and described in the specifications. The quality of material in such deposits will be acceptable in general, but the Contractor shall determine for himself the amount of equipment and work required to produce a material meeting the specifications. It is understood that it is not feasible to ascertain from samples the limits of an entire deposit, and that variations are usual and to be expected. The Director may order procurement of material from any portion of a deposit and may reject portions of the deposit as unacceptable.

The State may make available to the Contractor the right to take materials from the sources designated on the plans and described in the specifications, together with the right to use such property as may be specified, for plant site, stockpiles and hauling roads.

If the Contractor desires to use material from sources other than those designated, he shall acquire the necessary rights to take materials from the sources and shall pay all costs related thereto, including any which may result from an increase in length of haul. All costs of exploring and developing such other sources shall be borne by the Contractor. The use of material from other than designated sources will not be permitted until representative samples taken by the Director have been approved and written authority is issued for the use thereof.

When material deposits are not designated in the specifications, the Contractor shall provide sources of material acceptable to the Director.

When sources of material or material deposits are provided by the Contractor, the State will assume the cost of processing samples to determine the suitability of the material.

Unless otherwise permitted, pits and quarries shall be so excavated that water will not collect and stand therein.

Upon completion of the work, sites from which material has been removed shall be left in a neat and presentable condition as approved by the Director. Where practicable, borrow pits, gravel pits, and quarry sites shall be located so that they will not be visible from the highway.

6.3 QUARRIES AND PITS ON STATE LAND—If suitable rock, gravel, sand, earth and other such material are available on lands owned by the State which will meet the requirements of the work and can be removed without damaging said lands, the Contractor may remove and use same; provided that he shall make written arrangements with the appropriate agency having jurisdiction over said lands to remove and use such material, designating the location from which he will remove the same, the purpose for which it will be used and the approximate quantity involved. The Contractor shall not remove any such material until a copy of the written arrangement is submitted to the State. The State reserves the right to direct the Contractor's operations and insure maximum utilization of available material and to set grading limits at any time to prevent damage to abutting private or public property.

6.4 RIGHTS IN AND USE OF MATERIALS FOUND ON THE WORK—With the approval of the Director, the Contractor may use on the project any stone, gravel, sand, or other material determined suitable by the Director, as may be found in the excavation. The Contractor will be paid both for the excavation of such materials at the corresponding contract unit price and for the pay item for which the excavated material is used. He shall replace at his own expense with other acceptable material all of that portion of the excavation material so removed and used which was needed for use in the embankments, backfills, approaches, or otherwise. No charge for the materials so used will be made against the Contractor. The Contractor shall not excavate or remove any material not within the grading limits, as indicated in the plans, without written authorization from the Director.

Unless otherwise provided, the material from any existing old structure may be used temporarily by the Contractor in the erection of the new structure.

6.5 SAMPLES, TESTS, CITED SPECIFICATIONS—All materials will be inspected, tested and accepted by the Director before incorporation in the work. Any work in which untested materials are used without approval or written permission of the Director shall be performed at the Contractor's risk and may be considered unacceptable and unauthorized and will not be paid for. When requested by the Director, the Contractor shall furnish certificates of compliance stating that the materials used in the work conform to the requirements of these specifications.

Unless otherwise designated, tests in accordance with the most recent standard

methods of AASHTO or ASTM, as of the date of advertisement for bids, will be made by and at the expense of the State. Samples will be taken by a qualified representative of the State. All materials being used are subject to inspection, test or rejection at any time prior to incorporation into the work. Copies of all test results will be furnished to the Contractor at his written request.

The Contractor shall furnish samples required by the State without charge, provide every facility for the securing of material samples, and provide means and assist in the verification of all scales, measures and other devices which he operates.

The State reserves the right to retest all materials which have been tested and accepted at the source of supply after the same have been delivered, prior to incorporation into the work and to reject all materials which, when tested, do not meet the requirements of the contract.

6.6 PLANT INSPECTION—The Director may undertake the inspection of materials at the source.

In the event plant inspection is undertaken the following conditions shall be met:

- (1) The Director shall have the cooperation and assistance of the Contractor and the producer with whom the Contractor has contracted for materials.
- (2) The Director shall have full entry at all times to such parts of the plant as may concern the manufacture or production of the materials being furnished.
- (3) If required by the Director, the Contractor shall arrange for an approved building for the use of the inspector; such building to be located conveniently near the plant, independent of any building used by the material producer, and conforming to requirements of the plans and specifications.
- (4) Adequate safety measures shall be provided and maintained by the Contractor.
- (5) For portland cement concrete, asphaltic concrete and aggregate crushing plants, the Contractor shall furnish a suitable building adjacent to the plant for the purpose of testing materials. In addition, the Contractor shall furnish for use by the Director laboratory scales, a motorized shaker, sieves and an oven or equivalent equipment approved by the Director.

When plant inspection is desired by the State and the State so informs the Contractor, the Contractor shall notify the Director twenty-four (24) hours prior to the beginning of such operations.

If the Contractor intends to use a plant or facility which has not been in use and has not been previously inspected and approved, the Contractor shall notify the Director at least ten (10) days before operating such plant or facility.

6.7 STORAGE OF MATERIALS—Materials shall be so stored as to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the Department's property may be used for storage purposes and for the placing of the Contractor's plant and equipment, but any additional space required therefor must be provided by the Contractor at his expense. Private property shall not be used for storage purposes without written permission of the owner or lessee, and if requested by the Director, copies of such written permission shall be furnished to him. All storage sites shall be restored to their original condition by the Contractor at his expense.

6.8 HANDLING MATERIALS—All materials shall be handled in such manner as to preserve their quality and fitness for the work. Aggregates shall be transported from the storage site to the work in vehicles so constructed as to prevent loss or segregation of materials after loading and measuring in order that there may be no inconsistencies in the quantities of materials intended for incorporation in the work as loaded, and the quantities as actually received at the place of operations.

6.9 UNACCEPTABLE MATERIALS—All materials not conforming to the requirements of the specifications at the time they are used shall be considered unacceptable and all such materials will be rejected and shall be removed immediately from the site of the work unless otherwise instructed by the Director. No rejected material, the defects of which have been corrected, shall be used until approval has been given.

6.10 DEPARTMENT-FURNISHED MATERIAL—The Contractor shall furnish all materials required to complete the work, except those specified to be furnished by the Department.

Material furnished by the Department will be delivered or made available to the Contractor at the points specified in the specifications.

The cost of handling and placing all materials after they are delivered to the Contractor are included in the contract price for the item in connection with which they are used.

The Contractor is responsible for all material delivered to him.

6.11 TRADE NAMES AND ALTERNATIVES—For convenience of designation, certain equipment, articles or materials may be designated on the plans or in the specifications under a trade name or the name of a manufacturer and his information catalogue. The use of alternate equipment, articles or materials of equal quality and characteristics for the purpose intended will be permitted, upon approval of the Director, in accordance with the following requirements.

- A. QUALIFICATION BEFORE BID OPENING**—When the specifications and/or plans specify brand materials or equipment by brand name to indicate a quality, style, appearance, or performance, the bidder will be assumed to have based his bid on one of the specified products, and where such proprietary product is specified, an alternate brand may be qualified if found equal or better by the Director. Bidders requesting qualification of alternate proprietary products must submit a request to the Director for review and approval at the earliest date possible, but in any event, such request must be received at the Director's office not later than ten (10) days before the bid opening date, not including the bid opening date.

It shall be the responsibility of the bidder to submit, in quintuplicate, sufficient evidence based upon which a determination can be made by the Director that the alternate brand is qualified. The evidence shall be transmitted with a covering letter which shall list the evidence submitted and the items for which the substitution is requested.

If the evidence accompanying a request for substitution is insufficient to qualify a particular model, the request shall be denied provided that further evidence may be submitted to qualify the item five (5) days prior to the bid opening date if the initial request was made prior to the deadline set above.

- B. SUBSTITUTION AFTER BID OPENING**—Substitution of material or equipment will not be allowed after the bid opening date except under the following circumstances:

- (1) A specified or prequalified item is delayed by a lengthy strike in the factory or

other unforeseeable contingency beyond the control of the Contractor which would cause an abnormal delay in the project completion.

- (2) A specified or prequalified item is found to be unusable due to change or other circumstances.
- (3) If the Contractor is willing to provide a more recently developed or manufactured item of material or equipment of the same manufacturer which the Director determines to be equal or better than the one specified or prequalified.

A substitution request, regardless of reason, shall be fully explained in writing, by the Contractor and shall include his justification for said request, the quantities and unit prices involved, quotations and such other documents as are deemed necessary to support the request. Substitutions allowed pursuant to this provision, with the exception of the circumstance described under (B)3, do not qualify as value engineering. Any savings in cost will accrue to the State except where value engineering applies, and any additional cost for the substituted items will be paid for by the Contractor.

The above shall not be construed to mean that substitution for brand name specified materials and equipment will be allowed; the Director reserves the right to deny any request he deems irregular or not in the best interest of the State.

The burden of proof as to the comparative quality and suitability of alternate equipment, articles or materials shall be upon the Contractor and he shall furnish, at his own expense, all information necessary or related thereto as is required by the Director. The Director shall be the sole judge of the comparative quality and suitability of alternates and his decision is final.

The above provisions shall not be construed as permitting the use of alternates for equipment, articles or materials which are not designated under a trade name or the name of a manufacturer and his information catalogue and for which specifications are set forth.

6.12 AMERICAN PRODUCTS PREFERENCE—Preference shall be given to American products, materials and supplies in accordance with Section 103-24, H.R.S.

6.13 PREFERENCE FOR HAWAII PRODUCTS—In case Hawaii products, as defined in Section 103-41, H.R.S., are available and meet minimum specifications, the Director will describe, in the specifications for the work to be performed, the products listed in the Hawaii products list established pursuant to Section 103-42, H.R.S., which may be used in the work to be performed. Any bidder utilizing Hawaii products may claim the preferences stated in Section 103-43, H.R.S., provided that such bidder designates in his bid the Hawaii products and the classes hereof and provided also that such products are qualified and registered with the Hawaii products list. For the purpose of determining the lowest bid price only, the provisions of Section 103-43, H.R.S., shall also apply. Any contract awarded or executed in violation of said Section 103-43 shall be void and no payment shall be made on account of such contract.

This Section shall not apply to contracts when its application will disqualify the State from receiving federal funds or aid.

ARTICLE VII—LEGAL RELATIONS AND RESPONSIBILITY TO

PUBLIC

7.1 LAWS TO BE OBSERVED—The Contractor shall at all times observe and comply with all Federal, State, County and City laws, ordinances, rules and regulations which in any

other unforeseeable contingency beyond the control of the Contractor which would cause an abnormal delay in the project completion.

- (2) A specified or prequalified item is found to be unusable due to change or other circumstances.
- (3) If the Contractor is willing to provide a more recently developed or manufactured item of material or equipment of the same manufacturer which the Director determines to be equal or better than the one specified or prequalified.

A substitution request, regardless of reason, shall be fully explained in writing, by the Contractor and shall include his justification for said request, the quantities and unit prices involved, quotations and such other documents as are deemed necessary to support the request. Substitutions allowed pursuant to this provision, with the exception of the circumstance described under (B)3, do not qualify as value engineering. Any savings in cost will accrue to the State except where value engineering applies, and any additional cost for the substituted items will be paid for by the Contractor.

The above shall not be construed to mean that substitution for brand name specified materials and equipment will be allowed; the Director reserves the right to deny any request he deems irregular or not in the best interest of the State.

The burden of proof as to the comparative quality and suitability of alternate equipment, articles or materials shall be upon the Contractor and he shall furnish, at his own expense, all information necessary or related thereto as is required by the Director. The Director shall be the sole judge of the comparative quality and suitability of alternates and his decision is final.

The above provisions shall not be construed as permitting the use of alternates for equipment, articles or materials which are not designated under a trade name or the name of a manufacturer and his information catalogue and for which specifications are set forth.

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ARTICLE VII—LEGAL RELATIONS AND RESPONSIBILITY TO

PUBLIC

7.1 LAWS TO BE OBSERVED—The Contractor shall at all times observe and comply with all Federal, State, County and City laws, ordinances, rules and regulations which in any

manner affect those engaged or employed in the work, the materials used in the work, and the conduct of the work. The Contractor shall also comply with all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto.

The Contractor shall protect and indemnify the State and all its officers, agents and employees against any claim or liability arising from or based on the violation of any such laws, ordinances, rules and regulations, orders or decrees, whether such violation is committed by the Contractor or his subcontractor or the employee of either or both. If any discrepancy or inconsistency is discovered in the contract for the work in relation to any such laws, ordinances, rules and regulations, orders or decrees, the Contractor shall forthwith report the same to the Director in writing.

Attention is directed to Hawaii Employment Relations Act, Chapter 377, H.R.S.; Hawaii Employment Security Law, Chapter 383, H.R.S.; Wage and Hour Law, Chapter 387, H.R.S.; Payment of Wages and Other Compensation, Chapter 388, H.R.S.; Industrial Safety, Chapter 376, H.R.S.; and Workmen's Compensation Law, Chapter 386, H.R.S.

7.2 WAGES AND HOURS REQUIREMENTS—The Contractor shall at all times observe and comply with all provisions of Chapter 104, H.R.S., relating to wages and hours of employees on public works, which require, in part, the following:

- A. **HOURS OF LABOR**—No laborer or mechanic employed on the jobsite shall be permitted or required to work in excess of eight (8) hours in any one day or in excess of forty (40) hours in any one week or on Saturdays, Sundays or legal holidays of the State unless he receives compensation for all hours worked in excess of such daily hours or in excess of such weekly hours or on Saturdays, Sundays and legal holidays of the State at a rate of not less than one and one-half times his basic hourly rate of pay.

Such overtime compensation shall be computed on a daily basis or on a weekly basis, whichever method of computation yields the greater amount of overtime compensation. In no event shall these provisions be deemed to require payment of both daily and weekly overtime compensation on account of the same hours worked.

Written consent from the Director shall be obtained for work in excess of the normal eight (8) working hours per day or at nights or on Saturdays, Sundays or legal holidays. In cases of emergency, verbal consent will be sufficient.

Should permission to work overtime or at nights or on any holiday be granted by the Director, or if work requiring overtime compensation for State employees is necessary as a result of the Contractor's scheduled operations, whether this work occurs on or away from the project site, the Contractor shall reimburse the State the cost incurred. The Director will notify the Contractor of the minimum number of State employees required prior to the start of any such work. The costs chargeable to the Contractor shall include the following:

- (1) Overtime compensation at one and one-half (1½) times the basic salary of each employee required to work overtime because of the Contractor's scheduled operations.
- (2) The State's share of the cost of employees' retirement, medical plan, social security, vacation, sick leave, workmen's compensation funds, and other applicable fringe benefits and overhead expenses.
- (3) The transportation cost incurred by the employees in connection with the overtime work.
- (4) A charge for the use of state-owned vehicles and equipment at rates based

on established rental rates in use by the Department for the particular equipment or vehicle.

The monies due the State for personnel services and for the use of vehicles and equipment as determined hereinabove shall be deducted from the monies due or to become due the Contractor. In any event the Contractor shall not pay State employees directly.

Any hours worked in excess of the normal eight (8) working hours per day or at nights or on Saturdays, Sundays or legal holidays are not chargeable toward a working day.

The State may cancel the overtime, night, Saturday, Sunday or legal holiday work when, in the opinion of the Director, there is no necessity for such work or when such work is detrimental to the progress of the work.

- B. RATE OF WAGES**—The minimum wages to be paid to the various classes of laborers and mechanics engaged in the performance of such work shall be not less than the wages which the State Director of Labor and Industrial Relations has determined to be the prevailing wages for corresponding classes of laborers and mechanics on projects of similar character in the State. Such prevailing wages shall not be less than the wages payable under federal law to corresponding classes of laborers and mechanics employed on State public works which are prosecuted under contract or agreement with the federal government.

The current wage rate schedule established by the State Department of Labor and Industrial Relations prior to the advertised date of bid opening and made a part of the specifications shall be applicable, except those changes received by the Director from said Department less than five (5) calendar days before the bid opening date. Any changes received prior to five (5) calendar days before the bid opening date shall be transmitted to prospective bidders in the form of an addendum, and the Director may, because of the addendum, postpone the opening of the bids in the best interest of the public.

The Contractor shall post in a prominent and easily accessible place at the project site the schedule of prevailing rates of minimum wages applicable to the work, and he shall give to each laborer and mechanic employed to perform services required under the contract at the time of his assignment to the project, a copy of such rates of wages required to be posted; provided, however, that where there is a collective bargaining agreement, the Contractor does not have to provide his employees the wage rate schedule.

- C. UNCONDITIONAL PAYMENT OF WAGES CONCEDED TO BE DUE**—The Contractor or his subcontractor shall pay all mechanics and laborers employed on the project site, unconditionally and not less often than once a week, and without deductions or rebate on any account except as allowed by law, the full amounts of their wages including overtime, accrued to not more than five (5) working days prior to the time of payment, at wage rates not less than those stated in the contract and specifications, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics.
- D. WITHHOLDING OF WAGES**—The State may withhold from payments due or to become due the Contractor such amounts as it may consider necessary to pay laborers and mechanics employed by the Contractor or any subcontractor on the project site the difference between the wages required by the contract and specifications and the wages paid to such laborers and mechanics, less deductions and rebates allowed by law.
- E. PAYROLLS AND PAYROLL RECORDS**—Certified copies of each weekly payroll

shall be submitted to the State within seven (7) calendar days after the regular payment date of the payroll period. The Contractor shall be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable wage rates contained in the wage rate schedule of these specifications, and that the classifications set forth for each laborer or mechanic conform with the work he performed.

Payroll records for all laborers and mechanics working at the project site shall be maintained by the Contractor and his subcontractors, if any, during the course of the work and preserved for a period of three years thereafter. Such records shall contain the name, address and social security number of each employee; his correct classification; rate of pay, fringe benefits including, but not limited to, health and welfare benefits, vacation and pension benefits, whether paid directly or indirectly to the laborer or mechanic; daily and weekly number of hours worked; deductions made and actual wages paid. Such records shall be made available for inspection by the State and by any of its representatives who may also interview employees on the project site during working hours.

F. FAILURE TO PAY REQUIRED WAGES—If the State finds that any laborer or mechanic employed on the project site by the Contractor or any subcontractor has been or is being paid wages at a rate less than the required rate by the contract and specifications, or has not received his full overtime compensation, the State may, by written notice to the Contractor, terminate his right, or the right of any subcontractor, to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid and may complete such work or part by contract or otherwise, and the Contractor and his sureties shall be liable to the State for any excess costs occasioned thereby.

7.3 WORKMEN'S COMPENSATION ACT—From the beginning of the work until its final acceptance, the Contractor shall insure all workmen directly or indirectly employed by him under the contract from personal injury by accident.

7.4 CITIZEN LABOR—No person shall be employed as a laborer or mechanic unless such person is a citizen of the United States or eligible to become one; provided that persons without such qualifications may be employed with the approval of the Governor until persons who are citizens and are competent for such services are available for hire.

7.5 LABOR DISCRIMINATION—Attention is directed to the provisions of Chapter 78, H.R.S., making certain discriminatory practices with respect to employment unlawful.

7.6 PERMITS, LICENSES AND TAXES—The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work.

7.7 PATENTED DEVICES, MATERIALS, AND PROCESSES—If the Contractor employs any design, device, material, or process covered by letters of patent or copyright, he shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and the surety shall indemnify and save harmless the State, any affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the State for any costs, expenses, and damages which it may be obligated to pay by reason of any infringement, at any time during the prosecution or after the completion of the work.

7.8 CONFLICTS OF INTEREST—In all State or Federal-aid projects, no official or

employee of the State or any other governmental instrumentality who is authorized in his official capacity to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any contract or subcontract in connection with such project shall have, directly or indirectly, any financial or other personal interest in any such contract or subcontract. No engineer, attorney, appraiser, inspector or other person performing services for the State or any governmental instrumentality in connection with the project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by the State or other governmental instrumentality in any contract or subcontract in connection with such project.

A violation of the provisions of this Section shall void the contract or agreement in respect of which such violation occurs, and no claim for loss or damage shall be made by the Contractor against the State or the Federal government.

7.9 FEDERAL AID PROVISIONS—When the United States Government pays all or any portion of the cost of a project, the Federal laws and the rules and regulations made pursuant to such laws must be observed by the Contractor, and the work shall be subject to the inspection of the appropriate Federal agency.

Such inspection shall in no sense make the Federal Government a party to this contract and will in no way interfere with the rights of either party hereunder.

7.10 SANITATION PROVISIONS—The Contractor shall provide and maintain sanitation (lavatory) facilities in a neat, sanitary condition such accommodations for the use of his employees and all others having legitimate reasons for being present as may be necessary to comply with the requirements of the Board of Health, or of other bodies or tribunals having jurisdiction.

7.11 PUBLIC CONVENIENCE AND SAFETY—The Contractor shall at all times conduct his work to assure the least possible obstruction to public traffic. The safety and convenience of the general public and of the residents along the project and the protection of persons and property shall be provided for by the Contractor.

7.12 BARRICADES AND WARNING SIGNS—The Contractor shall provide, erect, and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other traffic control and safety devices, and shall take all necessary precautions for the protection of the work and safety of the public.

7.13 USE OF EXPLOSIVES OR COMBUSTIBLES—When the use of explosives or combustibles is necessary for the prosecution of the work, the Contractor shall exercise the utmost care not to endanger life and property. The Contractor shall be responsible for all damage resulting from the use of explosives or combustibles.

The storage and use of explosives or combustibles shall be in accordance with the provisions of Section 376-21 to 376-24, H.R.S., and Chapter 133, H.R.S.

The Contractor shall give written notification of his intention to use explosives to the Director. Such notice shall be given at least twenty-four hours in advance of the use of explosives or combustibles. The Director may order a delay in such use. The notice shall not relieve the Contractor of liability for any damage caused.

7.14 PROTECTION AND RESTORATION OF PROPERTY—The Contractor shall be responsible for the preservation of all public and private property.

The Contractor shall be responsible for all damage or injury to property of any character, during the prosecution of the work, resulting from any act, omission, neglect, or misconduct in his manner or method of executing the work, or due to defective work or materials.

When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct of the Contractor, his employees or agents, the Contractor shall, at his own expense, restore, repair, or rebuild such property to a condition similar or equal to that existing before such damage or injury was done or make restitution in an acceptable manner.

7.15 RESPONSIBILITY FOR DAMAGE—The Contractor shall indemnify and save harmless the State, its officers and employees, from all suits, actions, or claims of any character brought because of any injuries to or damage sustained by any person, persons, or property on account of (1) the operations of the Contractor; (2) the negligence of the Contractor in safeguarding the work; (3) the use by the Contractor of unacceptable materials in constructing the work; (4) any act or omission, neglect, or misconduct of said Contractor; (5) any claims or amounts recovered for any infringements of patent, trademark, or copyright; and (6) any claims or amounts arising or recovered under the "Workmen's Compensation Act", or any other law, ordinance, order, or decree. The money due the Contractor under the contract as may be considered necessary by the State for such purpose may be retained for the use of the State. If no money is due, the Contractor's surety may be held until all suits, actions and claims for injuries or damages shall have been settled and suitable evidence to that effect furnished to the State. Money due the Contractor will not be withheld under this section if the Contractor submits satisfactory evidence that he is adequately protected by public liability and property damage insurance.

It is not the intention of the parties to this contract to make the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party hereto to maintain a suit for personal injuries or property damage based on a contract theory of liability. In any event, the Contractor shall hold and save the State harmless from suits and claims for personal injuries or property damage where such injuries or damage are caused by the negligent acts or omissions of the Contractor, its agents or employees.

7.16 CONTRACTOR'S RESPONSIBILITY FOR WORK—Until final written acceptance of the project by the Director, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part thereof by the action of the elements or from any other cause. The Contractor shall rebuild, repair, restore, and make good all damage to the work or any portion thereof occasioned by any cause before final acceptance and shall bear the expense thereof except damage to the work due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor such as acts of God, of the public enemy or governmental authorities.

When work is suspended for any cause whatever, the Contractor shall be responsible for the project and shall take such precautions as may be necessary to prevent damage to the project, provide for normal drainage and shall erect any necessary temporary structures, signs, or other facilities at his expense. During the period of suspension of work, the Contractor shall properly and continuously maintain all living material in newly established plantings, seedings, and soddings furnished under the contract.

7.17 CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES—Where the Contractor's operations are in close proximity to other property and damage to such may be considerable or inconvenient to the public, work shall not be commenced until arrangements necessary for the protection of such property have been made.

The Contractor shall cooperate with utility companies in the removal and relocation operations in order that these operations may progress in a reasonable manner keeping duplication of work to a minimum, and preventing unnecessary interruption in utility services.

In the event of an interruption in utility services by reason of a breakage or in the event a utility facility becomes exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the said authority in remedying the situation. If water service is interrupted, repair work shall be continuous until the service is restored. No work shall be undertaken around fire hydrants until provisions for continuous service have been approved by the local agency having jurisdiction over such facility.

During construction operations, the Contractor shall use special care to prevent damage to all pipes, cables and other underground utility facilities. Any damage done thereto, regardless of location or whether or not the underground facilities are shown on the plans, shall be repaired by the contractor at the Contractor's expense, or if required by the agencies having jurisdiction of such utilities, the Contractor shall arrange for the appropriate utility company to repair the damage at the Contractor's expense.

7.18 NON-LIABILITY OF PUBLIC OFFICIALS—In carrying out any of the provisions of these specifications, or in exercising any power or authority granted to them by or within the scope of the contract, there shall be no liability upon the Director and his authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the State.

7.19 NON-WAIVER OF LEGAL RIGHTS—Upon completion of the work, the State will expeditiously make final inspection and, if accepted, will notify the Contractor of acceptance. Such final acceptance, however, shall not preclude or estop the State from correcting any measurement, estimate, or certificate made before or after completion of the work, nor shall the State be precluded or estopped from recovering from the Contractor or his surety, or both, any overpayment it may have made, or for failure on the part of the Contractor to fulfill his obligations under the contract.

The Contractor shall be liable for latent defects.

ARTICLE VIII—PROSECUTION AND PROGRESS

8.1 SUBCONTRACTING—The Contractor shall not subcontract, sell, transfer, assign, or otherwise dispose of the contract or any portion thereof, or his right, title or interest in the contract without written consent of the Director.

Subject to the provisions of Section 103-29, H.R.S., the Contractor may subcontract a portion of the work but he remains primarily responsible for the work so subcontracted. The Contractor shall not be permitted to subcontract work to any subcontractor who has been suspended by the State.

The Contractor shall perform with his own organization, work amounting to not less than 50 per cent of the total contract cost, except that any items designated in the contract as "specialty items" may be performed by subcontract and the cost of any such specialty items so performed by subcontract may be deducted from the total contract cost before computing the amount of work required to be performed by the Contractor with his own organization. Where an entire item is subcontracted, the value of work subcontracted will be based on the contract item bid price. When a portion of an item is subcontracted, the value of work subcontracted will be estimated by the Director and be based on the cost of such portion of the contract item.

Before any work is started under a subcontract, the Contractor shall file with and receive the approval of the Director on the form entitled "Request for Approval of Subcontractors."

In the event of an interruption in utility services by reason of a breakage or in the event a utility facility becomes exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the said authority in remedying the situation. If water service is interrupted, repair work shall be continuous until the service is restored. No work shall be undertaken around fire hydrants until provisions for continuous service have been approved by the local agency having jurisdiction over such facility.

During construction operations, the Contractor shall use special care to prevent damage to all pipes, cables and other underground utility facilities. Any damage done thereto, regardless of location or whether or not the underground facilities are shown on the plans, shall be repaired by the contractor at the Contractor's expense, or if required by the agencies having jurisdiction of such utilities, the Contractor shall arrange for the appropriate utility company to repair the damage at the Contractor's expense.

7.18 NON-LIABILITY OF PUBLIC OFFICIALS—In carrying out any of the provisions of these specifications, or in exercising any power or authority granted to them by or within the scope of the contract, there shall be no liability upon the Director and his authorized representatives, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the State.

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Subject to the provisions of Section 103-29, H.R.S., the Contractor may subcontract a portion of the work but he remains primarily responsible for the work so subcontracted. The Contractor shall not be permitted to subcontract work to any subcontractor who has been suspended by the State.

The Contractor shall perform with his own organization, work amounting to not less than 50 per cent of the total contract cost, except that any items designated in the contract as "specialty items" may be performed by subcontract and the cost of any such specialty items so performed by subcontract may be deducted from the total contract cost before computing the amount of work required to be performed by the Contractor with his own organization. Where an entire item is subcontracted, the value of work subcontracted will be based on the contract item bid price. When a portion of an item is subcontracted, the value of work subcontracted will be estimated by the Director and be based on the cost of such portion of the contract item.

Before any work is started under a subcontract, the Contractor shall file with and receive the approval of the Director on the form entitled "Request for Approval of Subcontractors."

When any portion of the work which has been subcontracted is not prosecuted in a manner satisfactory to the Director, the Contractor, upon receipt of a written notice thereof, shall immediately remove the subcontractor from the project, and the subcontractor shall not again be employed on the project.

No subcontract shall in any case release the Contractor of his liability under the contract and bonds.

Under Section 103-29, H.R.S., the Contractor is required to list the names of persons or firms to be engaged by the Contractor as a joint contractor or subcontractor in the performance of the contract. Thereafter, any change to the list proposed by the Contractor is not permitted except as provided under Section 103-33, H.R.S. When a change in a listed subcontractor is requested by the Contractor for reasons other than those prescribed in Section 103-33, H.R.S., submission of a formal release of the Contractor by the listed subcontractor is required by the State before the substitution will be considered for approval regardless of whether the substitute is another subcontractor or the Contractor himself.

8.2 NOTICE TO PROCEED—Upon approval of the contract by the Director, a "Notice to Proceed" will be given the Contractor. The "Notice to Proceed" will indicate the date the Contractor is expected to begin the construction and from which date contract time will be charged.

The Contractor shall begin work within 15 days from the specified date, and he shall diligently prosecute the same to completion within the contract time allowed. The Contractor shall not begin work before the specified date without written approval.

Should the Contractor begin work before receiving the Notice to Proceed, any work performed by him in advance of the specified date will be considered as having been done by him at his volition and at his risk.

If written consent is given to do work in advance of the specified date, the Contractor may begin construction operations, subject to his assumption of the risk that the contract may be disapproved and subject to the following:

- (A) The Contractor shall, on beginning operations, take all precautions required for public safety and shall observe all the provisions in these specifications and the special provisions.
- (B) In the event of disapproval of the contract, the Contractor shall, at his expense, do such work as is necessary to leave the project site in a neat condition to the satisfaction of the Director. If the work done affects any existing road or highway, the Contractor shall at this expense restore it to its former condition, or the equivalent thereof, to the satisfaction of the Director.
- (C) All work done according to the contract prior to its approval will, when the contract is approved, be considered authorized work and will be paid for as provided in the contract.
- (D) The Contractor shall not be entitled to any additional compensation nor an extension of time for any delay, hindrance or interference caused by or attributable to doing the work prior to the date on which the contract was approved by the Director, except to the extent such delay, hindrance or interference would have been compensable had work begun on the date of such approval and the progress thereof been the same as that actually made.

8.3 INSURANCE AND WORK SCHEDULE—The Contractor, at his own cost, shall obtain and submit to the Director, within fifteen (15) days from the date of the award of the contract, three (3) copies of the following:

A. Certificate of Insurance from an insurance company or agency, acceptable to the State, showing full policy coverage of the Contractor and the State of Hawaii as additional insured for:

- (1) Workmen's Compensation;
- (2) Comprehensive Automobile Liability and Comprehensive General Liability with the following minimum limits of liability:

Policy Coverage	Limits of Liability		
	Bodily Injury		Property Damage
	Each Person	Each Occurrence	Each Occurrence
Comprehensive Automobile Liability	\$250,000	\$500,000	\$100,000
Comprehensive General Liability	---	\$500,000	\$100,000

B. Insurance and tax rates for:

- (1) Workmen's compensation insurance;
- (2) State unemployment insurance;
- (3) Federal unemployment insurance;
- (4) Social Security;
- (5) Public liability, including personal injury and property damage.

Such insurance and tax rates when accepted by the Director in writing shall become applicable and shall remain unmodified throughout the entire term of the contract. All insurance aforementioned shall cover the additional insured for all work performed under the contract, all work performed incidental thereto or directly or indirectly connected therewith, including traffic detour work or other work performed outside of the work area, and all change orders.

The Contractor shall submit within fifteen (15) days from the date of award of the contract a progress schedule for the Director's approval. The Contractor shall show thereon the equipment, labor and time he proposes to utilize in prosecuting the various major divisions of the work and his proposed sequence of operations. He shall also show the relationship of working days to total earnings on the progress schedule.

When requested by the Director, the Contractor shall submit supplementary progress schedules to reflect adjustments in the original progress schedule arising from changes in the progress of the work. The supplementary progress schedule shall show how the Contractor intends to adjust his performance of the work in order to complete the work within the contract time.

The Contractor shall begin work in accordance with the approved progress schedule after receiving the "Notice to Proceed." He shall prosecute the work in the order given in the progress schedule with labor and equipment adequate to complete the major items, portions or sections within the time limit for completion indicated in the schedule. In the event of failure to proceed with the work as rapidly as is provided in the progress schedule, or if it appears at any time that such work is not being prosecuted in a manner that will insure its completion within the time specified, the Director may require the Contractor to furnish and

place in operation such additional labor and equipment as the Director shall deem necessary to bring the work up to the progress schedule. If the Contractor fails to comply, the Director may employ labor and equipment and charge the Contractor for the cost thereof, including depreciation for plant and equipment.

8.4 LIMITATION OF OPERATIONS—The Contractor shall conduct the work at all times in such a manner and in such sequence as will assure the least interference with public traffic.

8.5 CHARACTER OF WORKMEN, METHODS AND EQUIPMENT—The Contractor shall at all times employ sufficient labor and equipment for prosecuting the several classes of work to full completion in the manner and time required by these specifications.

All workmen shall have the skill and experience necessary to perform properly the work assigned to them. Workmen engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform all work properly and satisfactorily.

Any person employed by the Contractor or by any subcontractor who, in the opinion of the Director, does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Director, be removed forthwith by his employer and shall not be employed again in any portion of the work.

If the Contractor fails to remove such person or persons or fails to furnish suitable and sufficient personnel for the proper prosecution of the work, the Director may by written notice suspend the work until such orders are complied with.

All equipment used on the work shall be of such size and mechanical condition as to produce satisfactory quality of work. Equipment used on any portion of the project shall be of such design that no injury to the roadway, adjacent property or other highways will result from its use.

When the contract does not specify the methods and equipment to be used, the Contractor may use any method and equipment approved by the Director in writing.

When the contract specifies the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by the Director in writing. The authorization may be on such conditions as the Director may deem necessary. No change will be made in payment for the construction items involved nor in contract time as the result of authorizing a change in methods or equipment under this section.

8.6 TEMPORARY SUSPENSION OF WORK—The Director may suspend the work in whole or in part for such period as he may deem necessary for any cause, including (1) unsuitable weather or such other conditions which may prevent proper prosecution of the work, or (2) failure on the part of the Contractor to prosecute or perform the work in strict compliance with the contract. The Contractor shall immediately comply with the written order of the Director to suspend all or part of the work. The suspended work shall be resumed only upon written notice to proceed by the Director.

If the State causes such suspension of work, the State shall assume the cost of eliminating the hazards or, at the Director's option, the State may perform the work at no cost to the Contractor. This provision shall apply only to the portion of the work suspended and shall not apply to the entire project unless the entire project is suspended.

If the suspension of the work is necessitated by any cause not attributable to the State, the Contractor shall, at his own expense, perform all work necessary to eliminate all hazards and inconveniences causing the suspension and repair any damages to the work. In the event the Contractor fails to perform the work as specified herein, the State may perform such work, and the cost thereof shall be paid by the Contractor or may be deducted from the payments

due or to become due the Contractor.

However, immediately before the State assumes the cost of maintenance, the Contractor shall eliminate all hazards and inconveniences and repair all damage to the work which, as determined by the Director, could have been performed by the Contractor prior to the suspension so that all traffic may pass through the work with a minimum of inconvenience and delay. If the Contractor fails to perform this work, the State shall perform the work, and the cost thereof shall be deducted from the payment due or to become due the Contractor under the contract.

If suspension of work is necessitated by a cause not attributable to the Contractor and, as a result of such suspension, the Contractor is unable to proceed with sixty (60) per cent of the normal labor and equipment force engaged in the controlling activity or operation for at least five (5) hours on any working day, the Contractor shall not be charged a working day under the contract. On days when the suspension applies only to non-controlling activities or operations, such days shall be deemed to be working days and shall be charged to the time of completion of the project.

If suspension of work is necessitated by any cause attributable to the Contractor, the days during which the suspension order is in effect shall be deemed to be working days and shall be charged to the time for completion of the work.

The Director's determination of the cause of any suspension shall be final.

8.7 DETERMINATION AND EXTENSION OF CONTRACT TIME—When the contract time is on a working day basis, the Director will furnish the Contractor a weekly statement showing the number of days charged to the contract for the preceding week and the number of days specified for completion of the contract. The Contractor will be allowed one week in which to file a written protest setting forth in what respect said weekly statement is incorrect. Failure to protest shall be deemed an acceptance by the Contractor of the correctness of the statement.

When the contract time is on a calendar day basis it shall consist of the number of calendar days stated in the contract beginning with the effective date of the Notice to Proceed, including all Sundays, holidays and non-work days. All calendar days elapsing between the effective dates of any orders of the Director to suspend work and to resume work for suspensions not the fault of the Contractor shall be excluded.

When the contract completion time is a fixed calendar date it shall be the date by which all work on the project shall be substantially completed.

The number of days for performance allowed in the contract as awarded is based on the original proposal. If satisfactory fulfillment of the contract requires performance of work in greater quantities than those set forth in the proposal, the contract time allowed for performance shall be increased on a basis commensurate with the amount and difficulty of the added work.

If the Contractor finds it impossible for reasons beyond his control to complete the work within the contract time as specified or as extended in accordance with the provisions of this Section, he may, at any time prior to the expiration of the contract time, make a written request to the Director for an extension of time setting forth therein the reasons which he believes will justify the granting of his request. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the Director finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, he may extend the time for completion as the conditions justify.

When final acceptance has been duly made by the Director as prescribed in Section

5.12, the daily time charge will cease.

8.8 FAILURE TO COMPLETE ON TIME AND LIQUIDATED DAMAGES—The Contractor shall complete the work within the time specified in the contract. The time shall commence from the date indicated in the "Notice to Proceed." If a calendar date is specified as the date of completion, in lieu of the number of calendar days or working days, the work shall be completed by that date.

Completion of the work within the required time is important since delay in the prosecution of the work will inconvenience the public and interfere with business.

If the Contractor fails to complete the work on time, damages will be sustained by the State. Since the amount of damages, exclusive of the actual cost of engineering, inspection and superintendence, including necessary traveling expenses, are difficult, if not impossible of definite ascertainment and proof, damages are hereby agreed upon, liquidated and fixed at the appropriate sum set forth in the Schedule of Liquidated Damages below for each and every working/calendar day which the Contractor has delayed in the completion of the contract; and the Contractor shall pay that amount as liquidated damages and not by way of penalty; and in case the same are not paid, the State may deduct the amount thereof from any monies due or that may become due the Contractor under the contract.

If the work called for under the contract is not finished and completed in all parts and requirements within the time specified, the Director shall, in addition to the right to assess the Contractor liquidated damages, assess the Contractor and deduct from any payment, the actual cost of engineering, inspection and superintendence, including necessary traveling expenses which are directly chargeable to the contract and which accrue during the period of the delay, except that the cost of final surveys and the preparation of final estimates shall not be included in such charges.

SCHEDULE OF LIQUIDATED DAMAGES

Total Amount Including Extras Set Up in Contract		Amount of Liquidated Damages	
From More Than	To and Includ- ing	Per Working Day	*Per Calendar Day
\$ 0	\$ 25,000	\$ 42.00	\$ 30.00
25,000	50,000	70.00	50.00
50,000	100,000	105.00	75.00
100,000	500,000	140.00	100.00
500,000	1,000,000	210.00	150.00
1,000,000	2,000,000	280.00	200.00
2,000,000	—	420.00	300.00

*This schedule to be used only when the work is not completed within the specified number of calendar days.

8.9 DEFAULT AND TERMINATION OF CONTRACT—If the Contractor:

- (1) Fails to begin the work under the contract within the time specified in the "Notice to Proceed," or
- (2) Fails to perform the work with sufficient workmen and equipment or with sufficient materials to assure the prompt completion of said work, or
- (3) Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable,

or

- (4) Discontinues the prosecution of the work, or
- (5) Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
- (6) Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- (7) Allows any final judgment to stand against him unsatisfied for a period of ten (10) days, or
- (8) For any other cause whatsoever, fails to carry on the work in an acceptable manner,

the Director will give notice in writing to the Contractor and his surety of such delay, neglect, or default.

If the Contractor, within a period of ten (10) days after such notice, does not proceed to remedy the delay, neglect or default the State may take any action deemed appropriate. The State may appropriate and use any or all materials and equipment as may be suitable and acceptable and may contract for the completion of the project according to the terms and provisions thereof, or use such other methods as in the opinion of the Director will be required for the completion of the project in an acceptable manner.

All costs and charges incurred by the State, together with the cost of completing the work under contract, will be deducted from any monies due or which may become due to the Contractor had he been allowed to complete the work under the contract. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the State the amount of such excess.

8.10 JUSTIFIABLE CAUSE FOR TERMINATION OF CONTRACT—In the event of a finding by the Director that a national emergency exists which creates a shortage of materials, labor, or equipment, and that such emergency will probably continue to exist for an unreasonable length of time, by reason of which the Contractor will be unable to proceed with the construction contract, or for any other legally justifiable cause, the State may cancel such construction contract, or any part thereof, under the terms hereinafter provided.

If the contract or any portion thereof is cancelled and the Contractor released before all items of work included in the contract have been completed, payment will be made at contract unit prices for the actual work performed, or agreed prices where no unit price is contained in the contract for any particular item of work. The Contractor shall be reimbursed for such expenditures as in the judgment of the Director are not otherwise compensated for, and as are required in preparing for and moving to and from the work, the intent being that an equitable settlement shall be made with the Contractor. No claim for loss of anticipated profits shall be considered.

Materials obtained by the Contractor for the work that have been inspected, tested, and accepted by the Director, and that are not incorporated in the work, and which have been properly stored and maintained, shall be purchased from the Contractor at actual cost as shown by receipted bills or other proper evidence of actual cost, at such points of delivery as may be designated by the Director.

ARTICLE IX—MEASUREMENT AND PAYMENT

9.1 MEASUREMENT OF QUANTITIES—All work acceptably completed under the con-

or

- (4) Discontinues the prosecution of the work, or
- (5) Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
- (6) Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- (7) Allows any final judgment to stand against him unsatisfied for a period of ten (10) days, or
- (8) For any other cause whatsoever, fails to carry on the work in an acceptable manner,

the Director will give notice in writing to the Contractor and his surety of such delay, neglect, or default.

If the Contractor, within a period of ten (10) days after such notice, does not proceed to remedy the delay, neglect or default the State may take any action deemed appropriate. The State may appropriate and use any or all materials and equipment as may be suitable and acceptable and may contract for the completion of the project according to the terms and provisions thereof, or use such other methods as in the opinion of the Director will be required for the completion of the project in an acceptable manner.

All costs and charges incurred by the State, together with the cost of completing the work under contract, will be deducted from any monies due or which may become due to the Contractor had he been allowed to complete the work under the contract. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the State the amount of such excess.

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Materials obtained by the Contractor for the work that have been inspected, tested, and accepted by the Director, and that are not incorporated in the work, and which have been properly stored and maintained, shall be purchased from the Contractor at actual cost as shown by receipted bills or other proper evidence of actual cost, at such points of delivery as may be designated by the Director.

ARTICLE IX—MEASUREMENT AND PAYMENT

9.1 MEASUREMENT OF QUANTITIES—All work acceptably completed under the con-

tract will be measured by the Director according to United States standard measure.

A station when used as a term of measurement means 100 linear feet.

The methods of measurement and computation to be used in determining the quantities of material furnished and of work performed under the contract will be those methods generally recognized as conforming to good engineering practice.

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the plans or ordered in writing by the Director.

Structures will be measured according to neat lines shown on the plans or as altered to fit field conditions in accordance with the method of measurement stated in these specifications.

All items which are measured by the linear foot will be measured parallel to the base or foundation upon which such structures are placed, unless otherwise shown on the plans or indicated in the Special Provisions.

In computing volumes of excavation the average end area method will be used. Other methods may be used if approved.

The term "gage," when used in connection with the measurement of plates, will mean the U. S. Standard Gage, except that when reference is made to the measurements of galvanized sheets used in the manufacture of corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing, then the term "gage" will mean that specified in the A.A.S.H.T.O. M 36, M 167, M 196, M 197 or M 219.

When the term "gage" refers to the measurement of wire, it will mean the wire gage specified in the A.A.S.H.T.O., M 32.

The term "ton" will mean the short ton consisting of 2,000 pounds avoirdupois. All materials which are measured by weight shall be weighed at locations designated by the Director on scales approved by qualified personnel. Trucks used to haul material measured by weight shall be weighed empty at such time as the Director may order, and each truck shall bear a plainly legible identification mark. The Contractor shall notify the Director twenty-four (24) hours prior to hauling any material the payment for which is based on weight.

Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type acceptable to the Director, provided that the body is of such shape that the actual contents may be readily and accurately determined. All vehicles shall be loaded to at least their water level capacity, and all loads shall be leveled when the vehicles arrive at the point of delivery.

Quantities of material wasted or disposed of in a manner not called for under the contract; rejected loads of material, including material rejected after it has been placed by reason of the failure to conform to the provisions of the contract; material not unloaded from the transporting vehicle; material placed outside of the lines indicated on the plans or given by the Director; or material remaining on hand after completion of the work will not be paid for and such quantities will be deducted from the final total measured quantities. No compensation will be allowed for hauling rejected material.

When requested by the Contractor and approved by the Director in writing, material specified to be measured by the cubic yard may be weighed, and such weights converted to cubic yards for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the Director and shall be agreed to by the

Contractor before such method of measurement of pay quantities is used.

Cement, if measured by the barrel or by the bag, will mean 376 pounds of cement in a barrel and 94 pounds of cement in a bag.

The term "lump sum" when used in connection with an item of payment, means payment for the complete item described in the contract.

When a complete structure or structural unit (in effect, "lump sum" work) is specified as the unit of measurement, the unit will be construed to include all necessary fittings and accessories unless otherwise specified.

Rental of equipment will be measured by time in hours of actual working time and necessary traveling time of the equipment within the limits of the project unless special equipment has been ordered by the Director in connection with force account work, in which case travel time and transportation to the project will be measured if approved by the Director. If equipment has been ordered held on the job on a standby basis by the Director, half time rates for the equipment will be paid.

When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit and others, and these items are identified by gage, unit weight, or section dimensions, such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

9.2 SCOPE OF PAYMENT—The Contractor's bid price shall be inclusive of all costs, direct or indirect, required for the fulfillment of the contract.

Contract payments to the Contractor by the State shall be full payment, including all taxes, for furnishing all materials, labor, equipment, tools, and incidentals necessary for the completed work, and for performing all work contemplated and embraced in the contract; and also for all loss or damage arising out of the nature of the work or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work and for all risks of every description connected with the prosecution of the work, and all expenses incurred by, or in consequence of the suspension or discontinuance of the work as herein provided; also for any infringement of patent, trademark or copyright, and for completing the work in an acceptable manner according to the plans and specifications.

For any item of work in the proposal, unless specifically provided for otherwise, the contract unit price, or lump sum price, for such item shall include all material, labor, equipment, tools and incidentals required for the complete item of work.

9.3 COMPENSATION FOR ALTERED QUANTITIES—When the accepted quantities of work vary from the quantities in the proposal schedule, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the original contract unit prices for the accepted quantities of work done. No allowance except as provided in Section 4.2 will be made for any increased expense, failure to recover costs or for loss of anticipated profits suffered or claimed by the Contractor resulting either directly from such alterations or indirectly from unbalanced allocation among the contract items or overhead expense on the part of the bidder and subsequent failure to recover the costs thereof or from any other cause.

9.4 EXTRA AND FORCE ACCOUNT WORK—Work performed in accordance with the requirements and provisions of Section 4.3 will be paid for at the unit prices or lump sum prices stipulated in the order authorizing the work or, if on a force account basis, the Contractor shall be compensated in the following manner:

- A. **LABOR**—For all labor (including foremen when authorized by the Director), the Contractor will receive the rate of wage including fringe benefits required by the applicable collective bargaining agreement or other employment contract, which shall be agreed upon in writing before beginning work for each and every hour that said labor is actually engaged in said work.

An amount equal to twenty (20) per cent of the actual labor cost to cover the Contractor's and subcontractor's operating expense, overhead and profit will be paid the Contractor.

No allowance for overtime compensation will be given without the written approval of the Director prior to performance of overtime work.

- B. **INSURANCE AND TAX**—The Contractor will also receive the actual costs paid for property damage, liability and workmen's compensation insurance premiums, State unemployment contributions, Federal unemployment taxes and social security taxes to which six (6) per cent shall be added.
- C. **MATERIALS**—For materials accepted by the Director and used, the Contractor shall receive the actual cost of such materials delivered and incorporated into the work, including transportation charges paid by him, to which twenty (20) per cent will be added.
- D. **EQUIPMENT**—For any machinery or special equipment (other than small tools and manual equipment) including fuel, lubricants, and repairs plus transportation costs, the use of which has been authorized by the Director, the Contractor shall receive the rental rates agreed upon in writing before such work is begun for the actual hours or any fraction thereof that such equipment is in operation on the work. No percentage shall be added to the equipment rental rates. If equipment rental rates are provided in the specifications, such rates shall be used.

All equipment shall be in good working condition and suitable for the purpose of which the equipment is to be used. Rental time will not be allowed while the equipment is inoperative due to breakdowns, delays or other such causes.

For equipment used three (3) consecutive working days or less, the hourly rental rate shall be the daily rate divided by eight (8); for equipment used four (4) consecutive days or more, but not more than two (2) consecutive weeks, the hourly rental rate shall be the weekly rental rate divided by forty (40); for equipment used for more than two (2) consecutive weeks, the hourly rental rate shall be the monthly rate divided by 176.

The rental time to be paid for use of equipment on a force account basis shall be the time the equipment is doing actual work and used exclusively for the force account work. The following provisions shall govern in determining the compensation to be paid to the Contractor:

- (1) The location from which the equipment is to be moved or transported shall be approved by the Director.
- (2) The rental period shall begin at the time the equipment is unloaded at the site of the force account work, excluding Saturdays, Sundays and legal holidays, unless the force account work is performed on such days, and shall terminate at the end of the day on which the Director directs the Contractor to discontinue the use of such equipment. The maximum rental period to be paid for per day shall not exceed eight (8) hours unless the equipment is in operation for a longer time with the approval of the Director.
- (3) Where the equipment must be transported to the site of force account work,

the Department will pay the cost of transporting the equipment, including its loading and unloading, from its original location to the site of the force account work. Upon completion of the work the Department will pay the cost of transporting the equipment back to its original location or to another location, whichever cost is less.

The cost of transporting the equipment shall not exceed the rates established by the State Public Utilities Commission. If such rates are nonexistent, then the rates will be determined by the Director based upon the prevailing rates charged by established haulers within the locale.

- (4) Where the equipment is self-propelled, the Department will pay the cost of moving the equipment by its own power from its original location to the site of the force account work. Upon completion of the work the Department will pay the cost of moving the equipment back to its original location or to another location whichever cost is less.

- E. **STATE EXCISE TAX**—A sum equal to the current percentage rate for the State excise tax on the total sum determined in (a), (b), (c) and (d) above, shall be added as compensation to the Contractor.

The compensation determined in (a), (b), (c) and (d) above, shall be deemed to be payment in full for work done on a force account basis, including superintendence, overhead, use of tools and equipment for which no rental is allowed, profit, all taxes, subcontracting and other costs in connection therewith which are not provided for herein.

- F. **RECORDS**—The Contractor and the Director shall compare records of the cost of work done as ordered on a force account basis at the end of each day. These daily records shall thereafter be deemed to be the basis for payment of the force account work.
- G. **STATEMENTS**—No payment will be made for work performed on a force account basis until the Contractor has furnished the Director with duplicate, itemized statements of the cost of such force account work detailed as follows:

- (1) **Laborers**—Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman and also the amount of fringe benefits payable, if any.
- (2) **Equipment**—Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
- (3) **Materials**
 - aQuantities of materials, prices, and extensions.
 - bCost of transporting materials, if such cost is not reflected in the prices of the materials.
- (4) **Insurance**—Cost of property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions, and social security tax.

Statements shall be accompanied and supported by receipt invoices for all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractor shall furnish an affidavit certifying that such materials were taken from his stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

9.5 ELIMINATED ITEMS—If the contract item of the work is eliminated and no change order was executed covering the elimination, the Contractor will be paid for the actual costs incurred in connection with such eliminated contract item if these costs had been incurred prior to the date of notification in writing of such elimination by the Director.

If acceptable material is ordered by the Contractor for the eliminated item prior to the date of notification of such elimination by the Director, and if orders for such materials cannot be cancelled, it will be paid for at the actual cost to the Contractor. In such cases the material paid for shall become the property of the State, and the actual cost of any further handling will be paid for by the State. If the material is returnable to the vendor and if the Director so directs, the material shall be returned, and the Contractor will be paid for the actual cost of charges made by the vendor for returning the material. The State shall also pay the actual cost of handling returned material.

The actual costs or charges to be paid by the State to the Contractor will be computed in the same manner as if the work were to be paid for on a force account basis.

9.6 ASSIGNMENT OF PAYMENTS—All monies payable under the contract, or any part thereof, shall be paid to the Contractor in accordance with the provisions of this Article, and no assignment or order executed by the Contractor directing payment of any portion or all of such funds to any other person or persons shall be recognized by the State unless such assignment or order specifies the amounts to be so paid and the purposes for which the assignment or order is given. Such assignment or order shall be attached thereto, by endorsement or otherwise, the consent of the surety. No such assignment or order shall be binding on the State.

9.7 PAYMENT FOR MATERIALS—Payments may be made to the extent of the cost to the Contractor of approved materials to be incorporated in the work, when delivered on the project site or stored in acceptable storage places in the vicinity of the project. Payments may also be made to the extent of the Contractor's cost for certain approved materials furnished and acceptably stored in a fabricator's yard provided such storage yard is within the State of Hawaii and the Contractor furnishes evidence satisfactory to the Director that such materials are identified for use on the project and that such materials cannot be reasonably used elsewhere. Payments authorized under this Section shall not exceed the bid price of such item and shall not constitute final acceptance. The Contractor shall be responsible for such materials.

Payment for material does not, in any way, relieve the Contractor from his obligation under the terms of the contract to furnish and to incorporate the material into the work according to the specifications.

No payment will be made for living or perishable plants until planted.

Payment for materials under this Section will not be made unless the vendor's invoice for the materials is submitted to the Director.

9.8 PROGRESS PAYMENTS—The Director will make an estimate in writing each month based on the items of work performed and materials incorporated in the work and the value therefor at the unit prices or lump sum prices set forth in the contract. All progress estimates and payments will be approximate only and shall be subject to correction at any time prior to or in the final estimate and payment. Each month as used herein shall mean the one period of time between the 16th day of one month and the 15th day of the succeeding month.

No progress payment will be made when the total value of the work done since the last estimate amounts to less than \$500.00.

If the Director finds that satisfactory progress is being made:

- A. An amount equivalent to 5 percent of the first 50 percent of the whole will be deducted from the total of the amounts ascertained as payable and retained by the Department until after completion of the entire contract in an acceptable manner.
- B. After 50 percent of the work has been completed, the Department may make any of the remaining progress payments in full.

If the Director finds that unsatisfactory progress is being made, the Department may, from the beginning of such unsatisfactory progress, withhold any amount up to 5 percent of any subsequent progress payments.

9.9 ACCEPTANCE AND FINAL PAYMENT—When the project has been accepted as provided in Section 5.12, the Director will prepare the final estimate of the quantities of the various classes of work performed. After the Contractor accepts such final estimate, he will be paid the entire sum found to be due after deducting all previous payments and all amounts to be retained or deducted under the provisions of the contract.

All prior progress estimates and payments shall be subject to correction in the final estimate and payment.

Final payment will not be made until the Contractor has filed with the Department the following:

- (1) Consent of the surety to payment of the final estimate;
- (2) Satisfactory evidence by affidavit that all debts resulting from the contract have been fully paid or satisfactorily secured;
- (3) Tax clearance from the Director of Taxation that all delinquent taxes levied or allowed under State statutes have been paid in accordance with Section 103-55, H.R.S.;
- (4) Properly executed non-gratuity affidavit similar to copy annexed hereto.

The filing of willfully false affidavits will disqualify the Contractor from bidding on future work of the State.

9.10 RECORDS, ACCOUNTS AND DOCUMENTS—All records, accounts and documents of the Contractor and his subcontractors, if any, in connection with the work performed under the terms of the contract, shall be retained and preserved for a period of not less than three (3) years from the date of final payment to the Contractor for the project and shall be available for inspection and auditing by representatives of the Department and other participating agency or agencies, if any, at the respective offices of the Contractor and his subcontractors. During such inspection and auditing of the records, accounts and documents, the Contractor shall assist in every way possible without cost to the State.

9.11 WARRANTY OF CONSTRUCTION—

- A. In addition to any other warranties that may be set out elsewhere in this contract, the Contractor warrants that the work performed under this contract conforms to the contract requirements and is free of any defect of equipment, material or design furnished, or workmanship performed by the Contractor or any of his subcontractors or suppliers at any tier. Such warranty shall continue for a period of one year from the date of final acceptance of the work, but with respect to any part of the work which the State takes possession of prior to final acceptance, such warranty shall continue for a period of one (1) year from the date the State takes possession.

Under this warranty, the Contractor shall remedy at his own expense any such failure to conform or any such defect. In addition, the Contractor shall remedy at his own expense any damage to State owned or controlled real or personal property when that damage is the result of the Contractor's failure to conform to contract requirements or any such defect of equipment, material, workmanship, or design. The Contractor shall also restore any work damaged in fulfilling the terms of this clause. The Contractor's warranty with respect to work repaired or replaced hereunder will run for one year from the date of such repair or replacement.

- B. The State shall notify the Contractor in writing within a reasonable time after the discovery of any failure, defect, or damage.
- C. Should the Contractor fail to remedy any failure, defect, or damage described in Paragraph A above within a reasonable time after receipt of notice thereof, the State shall have the right to replace, repair, or otherwise remedy such failure, defect, or damage at the Contractor's expense.
- D. In addition to the other rights and remedies provided by this clause, all subcontractors', manufacturers', and suppliers' warranties expressed or implied, respecting any work and materials shall, at the direction of the State, be enforced by the Contractor for the benefit of the State. In such case if the Contractor's warranty under Paragraph A above has expired, any suit directed by the State to enforce a subcontractor's, manufacturer's or supplier's warranty shall be at the expense of the State. The Contractor shall obtain any warranties which the subcontractors, manufacturers, or suppliers would give in normal commercial practice.
- E. If directed by the Director, the Contractor shall require any such warranties to be executed in writing to the State.
- F. Notwithstanding any other provision of this clause, unless such a defect is caused by the negligence of the Contractor or his subcontractors or suppliers at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the State nor for the repair of any damage which results from any such defect in State furnished material or design.
- G. The warranty specified herein shall not limit the State's rights under Section 5.12 Acceptance of these specifications with respect to latent defects, gross mistake, or fraud.

**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HONOLULU, HAWAII**

FORMS

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- B Declaration of State Employment**
- C Contract**
- D Bond**
- E Non-Gratuity Affidavit**

Director of Transportation
Aliiimoku Hale
869 Punchbowl Street
Honolulu, Hawaii 96813

Dear Sir:

The undersigned, as bidder, declares that this proposal is made without collusion with any other person, firm or corporation; that he has carefully examined the job site and that he has studied the proposed scope of work contemplated.

The undersigned agrees that if this proposal is accepted, he shall execute a contract with the State of Hawaii, similar to a copy of the same annexed to the General Provisions, to provide all necessary labor, machinery, tools, equipment, apparatus and any other means of construction, to do all the work and to furnish all the materials specified in the contract in the manner and within the time therein prescribed in the contract, and that he shall accept in full payment therefor the sum of the unit and/or lump sum prices as set forth in the attached proposal schedule for the actual quantities of work performed and materials furnished.

The undersigned understands that the quantities given in the attached proposal schedule are approximate only and are intended principally to serve as a guide in determining and comparing the bids; that the State of Hawaii does not, expressly or by implication, warrant or otherwise represent that the actual amount of work will correspond therewith.

The undersigned further declares that in case of discrepancy between the unit prices and the totals in the attached proposal schedule, the unit prices shall prevail.

Exhibit A

Director of Transportation
Aliiainmoku Hale
869 Punchbowl Street
Honolulu, Hawaii 96813

Dear Sir:

The undersigned, as bidder, declares that this proposal is made without collusion with any other person, firm or corporation; that he has carefully examined the job site and that he has studied the proposed scope of work contemplated.

The undersigned agrees that if this proposal is accepted, he shall execute a contract with the State of Hawaii, similar to a copy of the same annexed to the General Provisions, to provide all necessary labor, machinery, tools, equipment, apparatus and any other means of construction, to do all the work and to furnish all the materials specified in the contract in the manner and within the time therein prescribed in the contract, and that he shall accept in full payment therefor the sum of the unit and/or lump sum prices as set forth in the attached proposal schedule for the actual quantities of work performed and materials furnished.

The undersigned understands that the quantities given in the attached proposal schedule are approximate only and are intended principally to serve as a guide in determining and comparing the bids; that the State of Hawaii does not, expressly or by implication, warrant or otherwise represent that the actual amount of work will correspond therewith.

The undersigned further declares that in case of discrepancy between the unit prices and the totals in the attached proposal schedule, the unit prices shall prevail.

Exhibit A

The undersigned further proposes to execute the contract agreement and to furnish satisfactory security pursuant to Sections 103-34 to 103-36, inclusive, Hawaii Revised Statutes, within ten (10) days after the award of the contract or within such further time as the Director of Transportation may allow after the undersigned has received the contract documents for execution.

The undersigned agrees that he shall begin the work within fifteen (15) calendar days from the date he is notified to commence with the work which date is indicated in the notice to proceed and shall finish the entire project within the time prescribed.

The undersigned further agrees that the Director of Transportation may reject any or all bids and waive any defects when in his opinion such rejection or waiver will be for the best interest of the public.

The undersigned further acknowledges receipt and warrants a complete examination of the following listed items: notice to bidders, instructions to bidders, special provisions, if any, specifications, proposal, contract and bond forms, and the project plans.

The undersigned further agrees that if this proposal is accepted and the contract awarded, he shall, prior to payment of the final estimate, execute a non-gratuity affidavit form similar to a copy of the same annexed to the General Provisions.

Accompanying this proposal is

☐ bidder's bond

☐ cash

☐ cashier's check

☐ certified check



Check Whichever
is Applicable

in the amount of _____

_____ DOLLARS (\$ _____), pursuant to

Sections 103-28, 103-30 and 103-31, Hawaii Revised Statutes.

The undersigned acknowledges receipt of any addendum issued by recording in the space below the date of receipt.

Addendum No. 1 _____ Addendum No. 3 _____
Addendum No. 2 _____ Addendum No. 4 _____

In compliance with the provisions of Section 103-29, Hawaii Revised Statutes, the undersigned hereby submits the name of each person or firm to be engaged on the project as joint contractor or subcontractor and indicates the nature and scope of the work to be performed by said joint contractor or subcontractor. The undersigned understands that if his proposal does not comply with this requirement it shall be rejected.

Name of Subcontractor	Nature and Scope of Work
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____

Name of Joint Contractor	Nature and Scope of Work
1. _____	_____
2. _____	_____
3. _____	_____

("None" indicates no Subcontractor or Joint Contractor.)

The undersigned hereby certifies that the bid prices contained in the attached proposal schedule have been carefully checked and are submitted as correct and final.

Name of Corporation, Partnership or Individual

Signature and Title of Signer (Corporate Seal)

NOTE:

If bidder is a **CORPORATION**, the legal name of the corporation shall be set forth above together with the signature(s) of the officer(s) authorized to sign contracts on behalf of the corporation. The word "By" should be placed before the signature(s) and the title of each signer placed after his signature. Please attach to this page evidence of the authority of the officer(s) to sign on behalf of the corporation.

If bidder is a **PARTNERSHIP**, the true name of the firm shall be set forth above together with the signature(s) of the partner(s) authorized to sign contracts on behalf of the partnership. Please attach to this page evidence of the authority of the partner(s) to sign on behalf of the partnership.

If bidder is an **INDIVIDUAL**, his signature shall be placed above.

If signature is by an agent, other than an officer of a corporation or a member of a partnership, a **POWER OF ATTORNEY** must be on file with the Department prior to opening bids or submitted with the bid; otherwise, the bid may be rejected as irregular and unauthorized.

Business address _____

Business telephone _____

Dated _____, 19_____.

DECLARATION OF STATE EMPLOYMENT

In compliance with Section 84-15, Hawaii Revised Statutes, individuals or business entities entering or proposing to enter into a contract with the Department of Transportation, State of Hawaii, must fill in the appropriate Form A or Form B below before entering into such contract. Place X in applicable ☐ shown on form to be used.

.....

FORM A—DECLARATION FOR INDIVIDUALS ON STATE CONTRACT

SUBJECT: _____

1. I declare that I am ☐ am not ☐ a legislator, elected or appointed officer, compensated or uncompensated, member of a board or commission, or other employee of the State of Hawaii.

2. I declare that I have not participated in a State capacity in the past two years in the subject matter of this contract.

Date

Signature of Individual

.....

FORM B—DECLARATION FOR BUSINESS ENTITIES ON STATE CONTRACT

SUBJECT: _____

1. I declare that this firm is ☐ is not ☐ owned or controlled by any legislator, elected or appointed officer, compensated or uncompensated, member of a State board or commission, or other employee of the State of Hawaii.

2. I further declare that we have not been assisted or represented on this matter by an individual who has, in a State capacity, been involved in the subject matter of this contract in the past two years.

Name of Firm

Date

Signature and Title of Officer
of Corporation or Business Entity

Exhibit B

C O N T R A C T

THIS AGREEMENT, made this _____ day of _____,
19_____, by and between the STATE OF HAWAII, by its Director of Transportation, hereinafter referred to as "STATE," and _____
whose business and/or post office address is _____
hereinafter referred to as "CONTRACTOR":

WITNESSETH: That for and in consideration of the payments hereinafter mentioned, the CONTRACTOR hereby covenants and agrees with the STATE to complete in place, furnish and pay for all labor and materials necessary for

or such a part thereof as shall be required by the STATE, the total amount of which labor, material and construction shall be computed at the unit and/or lump sum price set forth in the attached proposal schedule and shall be the sum of _____

_____ DOLLARS (\$ _____) as follows:

Exhibit C

which sum shall be provided from the following fund(s):

all in accordance with the specifications, the special provisions, if any, the notice to bidders, the instructions to bidders, the proposal and plans for _____, on file in the office of the Director of Transportation. These documents, together with alterations, amendments, and additions thereto and deductions therefrom, are attached hereto or incorporated herein by reference and made a part of this contract.

The CONTRACTOR hereby covenants and agrees to complete such construction within _____ (_____) working days from the date indicated in the notice to proceed from the STATE subject, however, to such extensions as may be provided for under the specifications.

For and in consideration of the covenants, undertakings and agreements of the CONTRACTOR herein set forth and upon the full and faithful performance thereof by the CONTRACTOR, the STATE hereby agrees to pay the CONTRACTOR the sum of _____

DOLLARS (\$ _____) in lawful money, but not more than such part of the same as is actually earned according to the STATE'S determination of the actual quantities of work performed and materials furnished by the CONTRACTOR at the unit or lump sum prices set forth in the attached proposal schedule. Such payment, including any extras, shall be made, subject to such additions or deductions hereto or hereafter made in the manner at the time prescribed in the specifications and this contract. In any event, extras shall not exceed _____

_____ DOLLARS (\$ _____) in lawful money and shall be provided from the following fund(s):

Where Federal funds are involved, it is covenanted and agreed by and between the parties hereto that the sums of

shall be paid out of the applicable Federal funds, and that this contract shall be construed to be an agreement to pay said sums to the Contractor only out of the aforesaid Federal funds if and when such Federal funds shall be received from the Federal Government, and that this contract shall not be construed to be a general agreement to pay said portions at all events out of any funds other than those which may be so received from the Federal Government; provided, that if the Federal share of the cost of the project is not immediately forthcoming from the Federal Government, the STATE may advance the CONTRACTOR the anticipated Federal reimbursement of the cost of the completed portions of the work from funds which have been appropriated by the STATE for its pro rata share.

The CONTRACTOR further agrees to execute the attached non-gratuity affidavit form prior to payment of the final estimate by the STATE.

All words used herein in the singular number shall extend to and include the plural. All words used in the plural number shall extend to and include the singular. The use of any gender shall extend to and include all genders.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed the day and year first above written.

STATE OF HAWAII

By _____
Director of Transportation

By _____

By _____

APPROVED AS TO FORM

Deputy Attorney General

PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that _____

as Principal, and _____

as Surety, are held and firmly bound unto the State of Hawaii, its successors or assigns, in the full and just sum of _____

DOLLARS (\$ _____) in lawful money of the United States of America, for the payment of which to the State of Hawaii, its successors or assigns well and truly to be made, we do hereby bind ourselves and our respective heirs, executors or administrators and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounden Principal shall fully and faithfully perform and fulfill that certain contract dated _____, entered into by said Principal with the State of Hawaii for the furnishing and paying for _____

conforming in all respects to the stipulations, agreements, covenants and conditions of said contract as it now exists or may be modified according to its terms, and shall promptly pay all just claims for labor and materials used in the prosecution of the work provided for in the aforesaid contract, and shall deliver said work to the State of Hawaii, or to its successors or assigns, fully completed as specified and free from all liens and claims and without further cost, expense or charge to the State of Hawaii, its successors or assigns, and shall save and hold harmless the State of Hawaii, its officers, agents, successors or assigns from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof, then this obligation shall be void; otherwise, it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED:

1) that no change, extension, alteration, deduction or addition, permitted by said contract, in or to the terms of said contract, including the plans or specifications pertaining thereto, shall in any way affect the obligation of said Surety on this bond; and that said Surety does hereby waive notice of any such change, extension, alteration, deduction or addition in or to the terms of said contract or the plans or specifications pertaining thereto or in or to said work.

2) that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in said contract as liquidated damages shall be considered as, and held to be, fixed and liquidated damages which shall be forfeited to the State of Hawaii, its successors or assigns, in the event of a breach of any, or all, or any part of, the stipulations, agreements, covenants or conditions contained in said contract or in this bond, in accordance with the terms thereof.

Exhibit D

3) that this bond shall inure to the benefit of any and all persons entitled to file claims for labor performed or materials furnished in said work so as to give any and all such persons a right of action as contemplated in Section 507-17, Hawaii Revised Statutes.

WITNESS our hands and seals at _____,

State of _____, this _____ day of _____,

A.D. 19 _____

PRINCIPAL:

By _____
Its _____

By _____
Its _____

SURETY

By _____
Its _____

By _____
Its _____

APPROVED AS TO FORM

Deputy Attorney General

NON-GRATUITY AFFIDAVIT

A Release Form to be Executed and Filed
by the Contractor before the Final Payment is Made

Name of Project _____

Project No. _____

Contract No. _____

District of _____

Island of _____

STATE OF HAWAII)

) SS.

)

The undersigned hereby certifies that he is the _____
(Title)

_____ of _____
(Name of Individual)

_____; that in connection with the
(partnership or corporation)

aforesaid project, he or its officers, representatives, agents, subcontractors or employees has (have) not given or made any agreement to give to any Department of Transportation employee, his relatives or agents, any gift of money or any other gift; or gratuity in any form whatsoever; has (have) not loaned any money or anything of value to any Department of Transportation employee, his relatives or agents; has (have) not rented or purchased any equipment, or any form thereof, or supplies of any nature whatsoever from any Department of Transportation employee, his relatives or agents.

Subscribed and sworn to before me
this _____ day of _____, 19____.

Notary Public, _____ Judicial
Circuit, State of Hawaii

My Commission Expires: _____

Exhibit E